

## 803 CMR: CRIMINAL HISTORY SYSTEMS BOARD

### 803 CMR 1.00: SEX OFFENDER REGISTRY BOARD: REGISTRATION, CLASSIFICATION AND DISSEMINATION

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#### 1.01 Statutory Authorization and Purpose

803 CMR 1.00 is authorized by M.G.L. c. 6, §§ 178C through 178Q and St. 2003, c. 77, § 23 and sets forth Guidelines pertaining to the registration and classification of sex offenders, and the resulting dissemination of sex offender registry information in accordance with the law and based on the offender's level of risk of reoffense and degree of dangerousness posed to the public. 803 CMR 1.00 additionally provides a process for the removal from the sex offender registry of those individuals not required to register. The Sex Offender Registry Board (the "Board") may from time to time and in its discretion develop, implement, and/or amend its policies, procedures, and protocols to this end. The Board will exercise sound judgment and apply its expertise when making any registration or classification determination as required in 803 CMR 1.00.

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### 1.01: continued

803 CMR 1.00 sets forth the registration and classification procedures and Guidelines the Board uses to determine whether a convicted or adjudicated sex offender may be required to register as a sex offender and, if so, the offender's level of risk of reoffense and degree of dangerousness posed to the public. In the first stage, the Board makes a recommendation regarding the offender's duty to register and classification level which the sex offender can accept or reject. The Board shall develop and implement a Recommendation Process that includes policies, procedures, protocols, and objective standards to expeditiously and fairly evaluate offenders at this recommendation stage. The Recommendation Process shall also include 803 CMR 1.04 through 1.07 and 1.38 through 1.40 regarding recommended registration and classification determination.

The offender may reject the Board's recommendation by requesting a *de novo* hearing. The matter then goes to a second stage process wherein the offender is provided an individualized hearing conducted pursuant to 803 CMR 1.07 through 1.26, at which all relevant evidence is evaluated anew by a disinterested Hearing Examiner. Since, in requesting the hearing, the offender shall be deemed to have rejected the Board's recommendation, and, to ensure that the sex offender is provided an additional opportunity to present any relevant evidence bearing on his obligation to register and classification level, the Hearing Examiner shall not be bound by the Board's Recommendation Process, Classification Worksheet, or recommended finding as described in 803 CMR 1.39. Rather, the Hearing Examiner shall base his decision on the totality of all the relevant evidence introduced at the offender's individualized hearing pursuant to the standards in 803 CMR 1.22(3). In accordance with M.G.L. c. 6, § 178L(2), 803 CMR 1.00 shall govern all administrative hearings held by the Sex Offender Registry Board. 803 CMR 1.00 shall supersede the Standard Rules of Adjudicatory Procedure.

### 1.02: Regulations Do Not Limit Statutory Authority Cancellation

Nothing contained herein shall be interpreted to limit, contradict or override the authority granted to the Sex Offender Registry Board or others pursuant to M.G.L. c. 6, §§ 178C through 178Q and any other applicable provisions of the Massachusetts General Laws. 803 CMR 1.00 cancels all previous Sex Offender Registry Board policy statements, rules or regulations to the extent they are inconsistent with 803 CMR 1.00. The recommended classification of any offender who has not been finally classified prior to the May 30, 2002 shall remain valid. Likewise, the Final Classification of any offender issued prior to May 30, 2002 shall also be deemed to remain valid.

### 1.03: Definitions

As used in 803 CMR 1.00 the following words and phrases shall have the following meanings:

Authorized Representative. An appointed or privately retained attorney, legal guardian or other person authorized by the sex offender to represent him at the hearing. If the Authorized Representative is not an attorney, in addition to the Notice of Appearance, he shall submit written authorization signed and dated by the sex offender to the Sex Offender Registry Board at least ten business days prior to the scheduled hearing date. The written authorization shall state the relationship between the Authorized Representative and the sex offender. The sex offender shall appear at the hearing regardless of whether or not he has an Authorized Representative. Failure of the sex offender to appear at the hearing shall result in a waiver of his right to a hearing. An Authorized Representative may not testify as a witness.

Classification Worksheet. A form developed and approved by the Board that reflects the Recommendation Process, shows the foundation for each recommended registration and classification determination, and indicates the Board's recommended registration and classification determination for each offender. The Board shall make a blank copy of the Classification Worksheet generally available and available upon request.

Documentary Evidence. Clear and legible records, data, reports or letters submitted to the Sex Offender Registry Board by the sex offender or on behalf of the offender relative to his risk of reoffense, the degree of dangerousness posed to the public and his duty to register.

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### 1.03: continued

Employment. Any business, job, profession, labor, or occupation that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether compensated or uncompensated.

Expert Witness. A licensed mental health professional, excluding employees of the Sex Offender Registry Board, whose testimony and report offering an opinion as to a sex offender's risk of reoffense and degree of dangerousness were prepared expressly for reliance by a Party at a hearing conducted pursuant to 803 CMR 1.07 through 1.26.

Factor(s). The descriptions and definitions as well as the principles and authorities enumerated in 803 CMR 1.40 which the Board uses in its registration and classification determinations.

Final Classification. A sex offender shall be deemed finally classified when the Hearing Examiner determines that he is a Level 1, Level 2 or Level 3 Offender, except where a sex offender has declined to request a hearing or failed to appear at a scheduled hearing, in which case the recommended classification accomplished pursuant to 803 CMR 1.06 is the Final Classification.

Full Board. At least four members of the Sex Offender Registry Board. The Full Board may establish policies and procedures to implement the provisions of M.G.L. c. 6, §§ 178C through 178Q and 803 CMR 1.00. The Full Board shall review all applications for the termination of the obligation to register, as well as reclassification, made pursuant to 803 CMR 1.37B through 1.37C. In addition, the Full Board shall make all recommendations regarding sexually violent predator designations.

Guidelines for Recommended Classification (Guidelines). Guidelines created by the Sex Offender Registry Board to set forth the general criteria it shall utilize to make a recommended registration determination and, if applicable, classification level. The Guidelines are part of 803 CMR 1.00 and may be found at 803 CMR 1.38 through 803 CMR 1.40.

Hearing Examiner. An individual employed or contracted by the Sex Offender Registry Board, a single member of the Sex Offender Registry Board, or a Hearing Panel appointed by the Chair, or the Chair's designee, to conduct administrative hearings to determine by a Preponderance of the Evidence a sex offender's duty to register and Final Classification level. This determination shall be the final decision of the Sex Offender Registry Board. For purposes of judicial review, it shall be the final agency action.

Hearing Panel. Three Board Members appointed by the Board's Chair, or the Chair's designee, to preside over a hearing pursuant to M.G.L. c. 6, § 178L(2).

Independent Written Verification. Current written documentation provided by a sex offender to verify his present address for the purpose of registration. Any two types of the following five types of unaltered original documents bearing the name of the sex offender and his present address shall constitute Independent Written Verification:

- (a) rent or mortgage receipt;
- (b) utility bill;
- (c) bank or credit card statement;
- (d) passport, driver's license or official photo identification issued by the Registry of Motor Vehicles; and
- (e) any other current written document the Sex Offender Registry Board deems sufficient.

With the exception of a passport, driver's license or official photo identification issued by the Registry of Motor Vehicles, all other documentation must be dated within 45 days of presentation to the Sex Offender Registry Board or the police department.

Institution of Higher Learning. Any public or private post secondary educational, vocational, professional or trade institution, college, university, or school.

Juvenile. An individual under the age of 17.

1.03: continued

Level 1 Offender. The designation given to a sex offender when it has been determined that the individual's risk of reoffense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public access to information pertaining to the offender.

Level 2 Offender. The designation given to a sex offender when it has been determined that the individual's risk of reoffense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public access to sex offender registry information.

Level 3 Offender. The designation given to a sex offender when it has been determined that the individual's risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination (community notification) of sex offender registry information.

Mental Abnormality. A congenital or acquired condition of a person that affects the emotional or volitional capacity of such person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes such person a menace to the health and safety of other persons.

Notice of Appearance. A written declaration by the Authorized Representative of his intent to represent the sex offender at the hearing. The Notice of Appearance shall be submitted to the Sex Offender Registry Board at least ten business days prior to the scheduled hearing date. The Notice of Appearance shall state the name, address, telephone number and signature of the Authorized Representative, as well as the name of the sex offender he will be representing. The filing of a Notice of Appearance by an Authorized Representative shall not relieve the sex offender of his obligation to appear at the hearing. Failure of the sex offender to appear at the hearing shall result in a waiver of his right to a hearing.

Party. The sex offender and the Sex Offender Registry Board. At the hearing, the sex offender may represent himself or have an Authorized Representative. The Sex Offender Registry Board may have a representative responsible for presenting evidence and argument regarding the offender at any hearing held under 803 CMR 1.00. The Sex Offender Registry Board shall be identified by its name, not by its individual representatives' names.

Personality Disorder. A congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.

Preponderance of the Evidence. The standard applied at the administrative hearings where the Hearing Examiner determines whether based upon all of the evidence, it is more likely than not that the sex offender meets the standards specified for the duty to register and to be classified at a designated classification level. The Sex Offender Registry Board shall bear the burden of proof.

Receipt. The delivery of mail. There shall be a rebuttable presumption that any notice or letter mailed by the Sex Offender Registry Board to the offender at the address at which he is currently registered was received by the offender within three days of mailing.

Recommendation Process. The policies, procedures, protocols, and objective standards by which the Board shall review each of the factors set forth in M.G.L. c. 6, § 178K(1)(a) through (l) and explained in 803 CMR 1.40 to base its recommended classifications. The Board shall make its policies, procedures, protocols, and objective standards for the Recommendation Process generally available and available upon request.

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Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior. The later of two or more separate incidents of open and gross lewdness and lascivious behavior resulting in two separate convictions or adjudications of open and gross lewdness and lascivious behavior pursuant to M.G.L. c. 272, § 16. For determinations as to whether a second and separate adjudication or conviction constitutes a "Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior," pursuant to M.G.L. c. 6, § 178C, the Board shall presume that arraignments occurring on the same date are the result of separate incidents. The Board shall treat multiple adjudications or convictions resulting from a single incident as a single adjudication or conviction and shall exclude an offender's first or single adjudication for open and gross lewdness and lascivious behavior as a delinquent Juvenile occurring before August 1, 1992.

Sex Offender Registry. The central computerized database of all sex offenders required to register pursuant to M.G.L. c. 6, §§ 178C through 178Q. The Sex Offender Registry may include such data as:

- (a) the sex offender's name, aliases used, date and place of birth, sex, race, height, weight, eye and hair color, social security number, home address and work address and, if the sex offender works at or attends an institution of higher learning, the name and address of the institution;
- (b) photographs and fingerprints of the sex offender;
- (c) a description of the offense the sex offender committed, the city or town where the offense occurred, the date of conviction or adjudication and the sentence imposed;
- (d) any other information which may be useful in assessing the sex offender's risk of reoffending and degree of dangerousness; and
- (e) any other information which may be useful in identifying the sex offender. The Sex Offender Registry shall be updated based on information made available to the Board, including information acquired pursuant to the registration and classification provisions of M.G.L. c. 6, §§ 178C through 178Q and 803 CMR 1.00.

Sex Offender Registry Board ("Board"). ("SORB"). The administrative agency of the Commonwealth consisting of the members as set forth in M.G.L. c. 6, § 178K, and its staff.

Student. Any person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, vocational or professional institution, or Institution of Higher Learning.

Wetterling Offenses. Crimes defined as sex offenses pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071 including indecent assault and battery on a child under 14 under M.G.L. c. 265, § 13B; rape of a child under 16 with force under M.G.L. c. 265, § 22A; rape and abuse of a child under M.G.L. c. 265, § 23; assault of a child with intent to commit rape under M.G.L. c. 265, § 24B; kidnapping of a child under M.G.L. c. 265, § 26; enticing a child under the age of 16 for the purposes of committing a crime under M.G.L. c. 265, § 26C; inducing a minor into prostitution under M.G.L. c. 272, § 4A; living off or sharing earnings of a minor prostitute under M.G.L. c. 272, § 4B; disseminating to a minor matter harmful to a minor under M.G.L. c. 272, § 28; posing or exhibiting a child in a state of nudity under M.G.L. c. 272, § 29A; dissemination of visual material of a child in a state of nudity or sexual conduct under M.G.L. c. 272, § 29B; possession of child pornography under M.G.L. c. 272, § 35A; unnatural and lascivious acts with a child under 16 under M.G.L. c. 272, § 35A; aggravated rape under M.G.L. c. 277, § 39; any attempt to commit a violation of any of the aforementioned sections pursuant to M.G.L. c. 274, § 6 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

Work. Employment.

All words and phrases not defined herein shall be defined as in M.G.L. c. 6, § 178C. Unless otherwise indicated in a specific Factor enumerated in 803 CMR 1.40, the use of the male gender in 803 CMR 1.00 shall be deemed to include the female or neutral gender. The use of the singular includes the plural and vice versa where the context so permits.

1.04: Registration

(1) A sex offender, as defined in M.G.L. c. 6, § 178C, who has been convicted or adjudicated for a sex offense (also defined in M.G.L. c. 6, § 178C) shall register with the Sex Offender Registry Board by mail on a form provided by the Board. Additionally, the Board shall accept the registration for it receives from any nonresident person who has employment in the Commonwealth if such person is required to register as a sex offender in the state in which he resides.

(2) The Board will consider any person a sex offender who commits two or more separate incidents of open and gross lewdness and lascivious behavior on two or more separate occasions resulting in two separate convictions or adjudications of open and gross lewdness and lascivious behavior pursuant to M.G.L. c. 272, § 16. For determinations as to whether a second and separate adjudication or conviction constitutes a "Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior," pursuant to M.G.L. c. 6, § 178C, the Board shall presume that arraignments occurring on the same date are the result of separate incidents. The Board shall treat multiple adjudications or convictions resulting from a single incident as a single adjudication or conviction and shall exclude an offender's first or single adjudication for open and gross lewdness and lascivious behavior as a delinquent Juvenile occurring before August 1, 1992.

(3) The registration form provided by the Board shall include space for the offender to complete the following information:

- (a) name of the sex offender;
- (b) date of birth;
- (c) social security number (optional);
- (d) home address or intended home address;
- (e) work address or intended work address;
- (f) name and address of any Institution of Higher Learning at which the offender works, intends to work, is enrolled as a student, and/or intends to enroll as a student; and
- (g) signature of the sex offender, signed under the pains and penalties of perjury.

(4) The information obtained from the registration form shall be used by the Board to notify the sex offender of his right to submit Documentary Evidence, as set forth in 803 CMR 1.05, as well as to offer him the opportunity for a hearing in accordance with the procedures established in 803 CMR 1.00. Registration information shall not be available to the public unless and until the offender has been Finally Classified by the Board as a Level 2 or a Level 3 Offender.

(5) For sex offenders who have been released from all custody and supervision, the Board shall mail the registration form and the requirements of M.G.L. c. 6, §§ 178C through 178Q to the last known address of all sex offenders residing in the Commonwealth. The registration form must be completed by the offender and mailed to the Board within ten calendar days of Receipt. If the sex offender is a Juvenile at the time of such notification, the registration form shall also be mailed to:

- (a) his legal guardian;
- (b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) his most recent attorney of record.

(6) For sex offenders who are currently on probation or parole, the registration form must be completed by the offender and mailed to the Board within two calendar days of receiving notification of the duty to register.

(7) For sex offenders who are currently incarcerated, the registration form must be completed by the offender and mailed to the Board not later than two calendar days before release from custody. No sex offender shall be released from custody unless such registration form has been filled out, signed and mailed to the Board.

If the Board finally classified an incarcerated sex offender as either a Level 2 or Level 3 Offender before or during the sex offender's incarceration:

- (a) not later than two days before his release, the offender shall complete and mail the registration form to the Board; and

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(b) the Board shall notify the offender and the local police department in the city or town in which the offender intends to live, or if he does not intend to reside in the Commonwealth, in the city or town in which he intends to work or in which he intends to attend an Institution of Higher Learning that the offender must report in person to that police department within two days of his release from custody to register pursuant to 803 CMR 1.29 or 1.30.

(8) For sex offenders who have been convicted or adjudicated for a sex offense but have not been sentenced to confinement for 90 days or more to be served immediately, the registration form must be completed by the sex offender and mailed to the Board within two calendar days of receiving notification by the court of the duty to register or within two calendar days of release from confinement, whichever is later. If the sex offender is a Juvenile at the time of such notification, the registration form shall also be mailed to:

- (a) his legal guardian;
- (b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) his most recent attorney of record.

(9) For sex offenders who have been afforded the opportunity for a hearing and who have been Finally Classified, registration shall be in accordance with M.G.L. c. 6, §§ 178F through 178F½ and 803 CMR 1.28 through 1.30. Registration information shall be available to the public on those offenders Finally Classified as a Level 2 or a Level 3 Offender.

(10) Sex offenders are responsible for complying with all of the registration duties and obligations as set forth in M.G.L. c. 6, §§ 178C through 178Q. These registration duties and obligations shall be enforced to the extent permissible pursuant to any orders issued by a court of competent jurisdiction.

(11) Upon receiving a sex offender's registration data, or change in registration data, the Board shall transmit the registration data to:

- (a) police departments in municipalities where the sex offender lives and works, or where the sex offender intends to live and work upon release and where the offense was committed;
- (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at an Institution of Higher Learning, where the sex offender works and/or attends an Institution of Higher Learning or where the sex offender intends to work and/or attend an Institution of Higher Learning upon release; and
- (c) the Federal Bureau of Investigation.

Registration data received by the Board and disseminated to law enforcement pursuant to 803 CMR 1.04(11) shall not be disseminated to the public except in accordance with M.G.L. c. 6, §§ 178I, 178J and 178K and 803 CMR 1.29 through 1.35.

1.05: Notification of Right to Submit Documentary Evidence

(1) The Sex Offender Registry Board shall mail to the sex offender a letter notifying him of his right to submit Documentary Evidence relative to his risk of reoffense, the degree of dangerousness posed to the public and his duty to register. Any documents submitted by the offender shall become part of his file as compiled by the Board in making its recommendation. The offender shall submit such Documentary Evidence to the Board within 30 calendar days of receiving his notification. If the sex offender is a Juvenile at the time of such notification, the notification shall also be mailed to:

- (a) his legal guardian;
- (b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) his most recent attorney of record.

In the Board's discretion, a Juvenile sex offender and an adult sex offender whose only sex offense(s) was committed as a Juvenile may be requested to meet with the Board to assist in compiling the information necessary to make a recommended classification in accordance with 803 CMR 1.06.

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- (2) The Sex Offender Registry Board may extend the timeframe for a sex offender to submit Documentary Evidence. The sex offender shall send a written request to the Board for any such extension. In evaluating the request, the Board may consider such claims as insufficient notification, the offender's inability to secure records or documents from a sex offender treatment provider, or other unforeseen circumstances.

1.06: Recommended Registration Status and Classification

- (1) Pursuant to M.G.L. c. 6, § 178L(1), the Board shall prepare a recommended registration determination and, if applicable, a classification of the sex offender as a Level 1, Level 2, or Level 3 Offender. In addition to the process briefly explained below, the Board shall follow its Recommendation Process in making a recommendation regarding registration and, if applicable, classification.
- (2) A sex offender shall be required to register if the Board determines that the following four criteria apply:
  - (a) his criminal history indicates at least one conviction or adjudication for a sex offense as defined in M.G.L. c. 6, § 178C;
  - (b) the offense was sexual in nature;
  - (c) he lives, works, or attends an Institution of Higher Learning in the Commonwealth; and
  - (d) he currently poses a danger.
- (3) To determine whether a sex offender currently poses a danger, the Board shall review such criteria as:
  - (a) the offender's criminal history;
  - (b) the circumstances of the sex offense;
  - (c) the presence or absence of physical harm caused by the offense;
  - (d) whether the offense involved consensual conduct between adults; and
  - (e) other matters that demonstrate whether or not the offender poses a risk to reoffend.
- (4) If the Board determines that the offender does not have a duty to register, it shall notify the offender of such. The Board shall promptly remove information pertaining to the offender from the sex offender registry.
- (5) If a registration duty is determined, the Board shall prepare a recommended classification pursuant to the Guidelines found at 803 CMR 1.38 through 803 CMR 1.40. In preparing the recommended classification, the Board shall complete the Classification Worksheet.
- (6) The recommended registration status and classification shall be approved in writing by one Board member. The Board member who approved the recommended registration status and classification shall not be subject to a subpoena nor shall his mental process in reaching the recommended decision be otherwise probed, as the recommended classification may be appealed at a *de novo* hearing.
- (7) The Board shall prepare a recommended classification on a Juvenile sex offender and an adult sex offender whose only sex offense(s) was committed as a Juvenile by completing the Classification Worksheet, considering any other information deemed useful by the Board and, if applicable, meeting with the offender and, if he chooses, his Authorized Representative. The Board shall not draw any adverse inferences from an offender's refusal or failure to meet with the Board. If the sex offender was a Juvenile at the time of the offense, written approval of a recommendation shall be given by the Board member who is a licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of Juvenile sex offenders.
- (8) A Board member shall not preside as a Hearing Examiner, or serve on a Hearing Panel, in a case where he gave written approval of the recommended registration status and classification, except in the case of a Juvenile sex offender and an adult sex offender whose only sex offense(s) was committed as a Juvenile. In these circumstances, the Board member who is a licensed psychologist or psychiatrist with expertise in Juvenile sex offenders may both approve the Board staff person's recommendation and preside as the Hearing Examiner. The Board member who



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gave written approval of a sex offender's recommendation shall not be prohibited from participating in any sexually violent predator recommendation regarding the offender made pursuant to 803 CMR 1.31, or any motion to terminate registration obligations made by the offender pursuant to 803 CMR 1.37B, or any motion to reclassify pursuant to 803 CMR 1.37C.

### 1.07: Notification of Recommended Registration Status, Classification and Right to Request a Hearing

(1) Upon completion of the process set forth in 803 CMR 1.06, the Sex Offender Registry Board shall notify the sex offender of its recommended registration determination and, if applicable, his classification. At such time, the sex offender shall be notified of his right to request a hearing to challenge the Board's recommendation. If the sex offender is a Juvenile at the time of such notification, the notification shall also be mailed to:

- (a) his legal guardian;
- (b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) his most recent attorney of record.

(2) The request for a hearing must be sent in writing to the Board within 20 calendar days of Receipt of the recommended registration determination and, if applicable, the classification. By requesting a hearing, the sex offender will be deemed to have expressly rejected the Board's recommended classification, and will have thereby agreed to be classified by the totality of the evidence standards as set forth in 803 CMR 1.22(3).

(3) The sex offender who has requested a hearing may withdraw his request at any time prior to the date of the hearing by writing to the Board or by stating his intent to withdraw on the record before the Hearing Examiner prior to any testimony being presented. An offender may not thereafter withdraw his request except upon approval by the presiding Hearing Examiner. The withdrawal shall result in a waiver of the right to a hearing. The registration determination and, if applicable, the recommended classification shall become the final Sex Offender Registry Board decision and shall not be subject to judicial review. Notification of such decision shall be accomplished in accordance with 803 CMR 1.25. In addition, law enforcement shall be notified in accordance with 803 CMR 1.27.

### 1.08: Right to Have Counsel Appointed If Indigent

(1) The Sex Offender Registry Board shall provide each sex offender with the requisite forms to be completed if the offender claims to be indigent and requests the appointment of counsel. All forms must be completed and mailed to the Board within 20 calendar days of Receipt.

(2) If the Board has determined that the sex offender is indigent and thus entitled to the appointment of counsel pursuant to M.G.L. c. 211D, the sex offender shall be notified in writing that he has satisfied the requirements to have an attorney represent him at the hearing.

(3) If the Board has determined that the sex offender is not entitled to the appointment of counsel pursuant to M.G.L. c. 211D, the sex offender shall be notified in writing that he will not have an attorney appointed to represent him. The sex offender shall further be notified that he may retain private counsel of his choice at his expense or that he may have an Authorized Representative at the hearing.

### 1.09: Notification of the Hearing

(1) The Sex Offender Registry Board shall arrange the date, time and place of the hearing. Not less than 30 calendar days prior to the date of the hearing, the sex offender or his Authorized Representative (if a Notice of Appearance has been filed) shall be mailed notification of such arrangements. At such time, the sex offender or his Authorized Representative shall also be provided with a copy of his file as compiled by the Board to make its recommendation. If the sex offender is a Juvenile at the time of such notification, the notification shall also be mailed to:

- (a) his legal guardian;

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- (b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) his most recent attorney of record.

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(2) In a particular case where the Board intends to rely on the testimony or report of an Expert Witness prepared specifically for the purposes of the registration status and classification hearing, said notification shall inform the sex offender or his Authorized Representative of this intention. In the event that the Board intends to rely on the testimony or report of an Expert Witness and the sex offender has been found to be indigent, the Board shall notify the offender or his Authorized Representative that he may apply for and the Board may grant the payment of fees for an Expert Witness.

(3) An Authorized Representative may not testify as a witness.

1.10: Scope of the Hearing

(1) The hearing shall be a *de novo* review and be limited to determining by a Preponderance of the Evidence the sex offender's duty to register and his Final Classification. The Board shall bear the burden of proof.

(2) Hearings held by the Sex Offender Registry Board shall not be open to the public.

1.11: Motions

(1) All motions, unless made during the hearing, shall be in writing. All motions, made at or before the hearing, shall be included in the record of the hearing. The Hearing Examiner shall have the discretion to rule on any motion at the time it is filed/made or to reserve ruling until a later time.

(2) Written Motions.

(a) Grounds and Affidavit. All written motions shall state specifically the grounds therefore and shall set forth the action or order that is sought. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be attached to said motion.

(b) Oral Argument. The Hearing Examiner may hear oral argument on motions at the time of the scheduled hearing.

(c) Timely Filing. Parties shall file all written motions no later than ten business days prior to the scheduled hearing date.

(d) Service and Notice. A copy of any motion, supporting affidavits and documents shall be served on all Parties at the time the originals are filed with the Board.

(e) Opposition to Motion. Opposition to any motion may be submitted in writing or argued orally at the hearing.

(3) Oral Motions. If a motion is made orally at the hearing, the Hearing Examiner may request that the motion and any opposition be reduced to writing.

1.12: Procedures and Requirements for Rescheduling

(1) Rescheduling Prior to the Day of the Hearing.

(a) The Sex Offender Registry Board may change the date, time and/or place of the hearing upon due notice to the Parties.

(b) For good cause shown, the Board may, at the request of the sex offender or his Authorized Representative, reschedule the hearing provided that the request is in writing and it is received at least three business days prior to the date of the hearing, or as otherwise practicable as determined by the Board. If the Hearing Examiner concludes that the request does not demonstrate good cause, the request shall be denied. If the request is denied and the sex offender fails to appear at the scheduled hearing, the registration determination and, if applicable, the recommended classification accomplished in accordance with 803 CMR 1.06 shall become the final Sex Offender Registry Board decision. If the request for rescheduling is approved, the sex offender shall be notified of the new arrangements in accordance with 803 CMR 1.09, provided, however, that less than 30 calendar days notice of the date of the rescheduled hearing may be given.

(2) Good Cause. In evaluating good cause, the Hearing Examiner may consider such reasons as the following:

1.12: continued

- (a) The amount of time during which the sex offender had advance notice of the hearing;
  - (b) The sex offender's ability to anticipate the circumstances which resulted in his inability to appear;
  - (c) Delay by the sex offender in notifying the Board of his inability to attend the hearing; and
  - (d) The number of previous rescheduling requests.
- (3) No request to reschedule a hearing based on a scheduling conflict of the Authorized Representative (who is an appointed or privately retained attorney) shall be granted unless the Authorized Representative received and submitted a protective order issued by the court on his behalf.
- (4) No request to reschedule a hearing based on the unavailability of a witness shall be granted unless the witness's absence was unforeseeable and the offender or his Authorized Representative demonstrates that his testimony is necessary for a fair hearing. Except as provided for in 803 CMR 1.18(6), the Hearing Examiner, in his discretion, may grant leave to allow the witness, within a reasonable time, to submit written documents in lieu of live testimony.

1.13: Failure of Sex Offender to Request Hearing or to Appear at Hearing

- (1) Failure timely to petition the Sex Offender Registry Board for a hearing shall result in a waiver of the right to a hearing. The registration determination and, if applicable, the recommended classification shall become the final Sex Offender Registry Board decision and shall not be subject to judicial review. Notification of such decision shall be accomplished in accordance with 803 CMR 1.25. In addition, law enforcement shall be notified in accordance with 803 CMR 1.27.
- (2) Failure of the sex offender to appear at the scheduled hearing without good cause shown shall result in the waiver of the right to a hearing and the registration determination and, if applicable, the recommended classification becoming the final Sex Offender Registry Board decision and shall not be subject to judicial review. Notification of such decision shall be accomplished in accordance with 803 CMR 1.25. In addition, law enforcement shall be notified in accordance with 803 CMR 1.27.

1.14: Representation

- (1) The sex offender may represent himself at the hearing. The Hearing Examiner shall require the offender to sign a statement declaring that he has been informed of his right to have counsel present and that he knowingly and voluntarily has waived that right.
- (2) The sex offender may have an Authorized Representative to act on his behalf and to advise him, provided however, that the Authorized Representative shall submit a Notice of Appearance to the Sex Offender Registry Board at least ten business days prior to the scheduled hearing date. If the Authorized Representative is not an attorney, in addition to the Notice of Appearance, he shall submit written authorization signed and dated by the sex offender to the Sex Offender Registry Board at least ten business days prior to the scheduled hearing date. The written authorization shall state the relationship between the Authorized Representative and the sex offender. In addition, the Hearing Examiner shall require the offender to sign a statement declaring that he has been informed of his right to have counsel present and that he knowingly and voluntarily has waived that right.
- (3) All offenders who are Juveniles at the time of notification of the hearing shall be represented by counsel at the hearing. Any offender who is a Juvenile at the time of the notification and who has not retained counsel shall be entitled to appointment of counsel.
- (4) The Sex Offender Registry Board may have a staff person and/or attorney present evidence and argument at the hearing. Said person shall have the status of a Party.

1.14: continued

(5) An Authorized Representative who is an attorney shall not be permitted to withdraw his appearance on the day of the scheduled hearing unless successor counsel is present and prepared to proceed with the hearing or the offender is prepared to proceed by representing himself, or another Authorized Representative is present and prepared to proceed with the hearing.

1.15: Conduct of the Hearing

The Hearing Examiner shall govern the conduct of every phase of the hearing, including, but not limited to, the interpretation and construction of 803 CMR 1.00 and the conduct of all Parties. All Parties, Authorized Representatives, witnesses and other persons present shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. If a Party's conduct interferes with the orderly presentation of the evidence, the Hearing Examiner may take any appropriate action, including, but not limited to, continuing the hearing in the absence of the offending participant and rendering a decision based on the evidence admitted.

1.16: Order of Presentation

Unless otherwise determined by the Hearing Examiner, the Sex Offender Registry Board shall proceed first at all stages in the hearing, except that the Board shall proceed last with its closing argument.

1.17: Subpoenas

Subject to 803 CMR 1.18, any Party to the hearing shall have the right to subpoena witnesses and/or documents in accordance with M.G.L. c. 30A, § 12, except that a Board member who approved the recommended registration status and classification shall not be subject to a subpoena nor shall his mental process in reaching the recommended decision be otherwise probed, as the recommended classification may be appealed at a *de novo* hearing.

A subpoena request shall be made in writing and directed to the presiding Hearing Examiner. Such request shall set forth the name, address and date of birth of the witness and additionally, the substance of the witness's expected testimony. All subpoena requests shall be filed no later than 21 business days prior to the hearing date.

1.18: Discovery

(1) When the sex offender is notified of the arrangements for his hearing in accordance with 803 CMR 1.09, he shall also be provided with a copy of his file as compiled by the Sex Offender Registry Board to make its recommendation. A Board employee shall redact data from documents within the file that are deemed to be privileged, confidential, investigatory or intelligence information, or information that identifies a victim. Such redacted data shall not:

- (a) be introduced into evidence,
- (b) be communicated in any manner to the Hearing Examiner, or
- (c) become part of the record.

In addition, at least ten business days prior to the hearing, the offender or his Authorized Representative shall be provided with a copy of any documents the Board intends to introduce into evidence that have not been provided previously as part of the offender's file.

(2) Any documents the offender or his Authorized Representative intend to introduce into evidence shall be provided to the Board at least ten business days prior to the scheduled hearing date.

(3) Each Party shall provide a complete witness list, including the name, address, date of birth, and relationship to the offender (*e.g.*, family member, therapist, Expert Witness, *etc.*) for each witness, at least ten business days prior to the scheduled hearing date. Failure timely to provide a complete witness list shall result in the Hearing Examiner excluding the testimony of any witness not listed.

(4) For good cause shown, the Hearing Examiner may permit a Party to supplement or amend a witness list no later than five business days prior to the scheduled hearing date.

## 1.18: continued

(5) If a Party intends to rely on the report and testimony of an Expert Witness, a report or a written substantive summary of the Expert Witness's anticipated testimony shall be provided to the other Party at least ten business days prior to the scheduled hearing date. The report or written substantive summary shall include the name of each Expert Witness who is anticipated to testify, the subject matter of such testimony, and the substance of the facts and opinions of the anticipated testimony. The Party intending to rely on an Expert Witness shall also provide the written qualifications, resume, or "curriculum vitae" of the Expert Witness. Failure to comply with these provisions shall result in the exclusion of an Expert Witness's report and testimony into evidence.

(6) At the hearing, a Party shall be permitted to introduce into evidence an Expert Witness's written report, including his opinion as to the offender's risk of reoffense and/or dangerousness, only if the author of the report is called as a witness and is otherwise qualified as an expert. A Party's failure to call an Expert Witness to testify at the hearing shall result in the exclusion of so much of the report as expresses the Expert Witness's opinion as to such risk.

1.19: Evidence

(1) General. The rules of evidence observed by courts shall not apply to hearings before the Sex Offender Registry Board, but the rules of privilege recognized by law shall be observed. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or repetitive evidence may be excluded.

(2) Presentation at Hearing. No evidence shall be considered unless it is presented at the hearing, unless the Hearing Examiner, upon request of a Party for good cause shown, holds the record open to receive additional evidence for a specified period after the hearing.

(3) Oral Testimony. Oral testimony shall be given under oath or affirmation. Witnesses shall be available for direct examination and cross-examination.

(4) Stipulations. The parties may, by written stipulation filed with the Hearing Examiner at any stage of the proceeding or by oral stipulation made at the hearing, agree as to the truth of any fact pertinent to the proceedings.

1.20: Ex Parte Communications

No Party to a hearing before the Board shall submit to the Hearing Examiner any information, evidence, argument or advice, whether written or oral, regarding any matter at issue, unless such submission is offered openly during the course of the hearing or in writing after the hearing if allowed pursuant to 803 CMR 1.19(2). A copy of any written submissions shall be offered immediately to all Parties. 803 CMR 1.20 shall not apply to the process set forth in 803 CMR 1.06 for Juvenile sex offenders and adult sex offenders whose only sex offense(s) was committed as a Juvenile, whereby the Board member who is a licensed psychologist or psychiatrist with expertise in Juvenile sex offenders may both approve the Board staff person's recommendation and preside as the Hearing Examiner.

1.21: Duties and Powers

- (1) The duties of the Hearing Examiner shall include, but not be limited to, the following:
  - (a) To administer the oath or affirmation to any person prior to testifying;
  - (b) To assist all persons in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved;
  - (c) To ensure orderly presentation of the evidence;
  - (d) To ensure that all Parties have a full opportunity to present their claims at the scheduled hearing;
  - (e) To receive, rule on, exclude, or limit evidence;
  - (f) To receive and rule on all motions; and

## 1.21: continued

- (g) To assess the reliability of the exhibits introduced into evidence and credibility of witnesses; draw all reasonable inferences therefrom and render a fair, independent and impartial decision based on the issues and evidence presented and in accordance with the law.
- (2) The powers of the Hearing Examiner shall include, but not be limited to, the following:
  - (a) To limit attendance or assign seating or both at the hearing in consideration of security, space availability, privacy and confidentiality;
  - (b) To require that all individuals in attendance at the hearing who are not employees of the Sex Offender Registry Board sign their names and write their addresses on a list provided;
  - (c) To request that Parties produce additional evidence;
  - (d) To examine witnesses;
  - (e) To rule on any motions or requests made during the hearing;
  - (f) To regulate the presentation of evidence and the participation of the Parties for the purposes of ensuring an adequate and comprehensive record of the hearing;
  - (g) To change the date, time or place of the hearing on its own motion or at the request of any Party, upon due notice to all Parties;
  - (h) To continue a hearing that is in progress. All Parties shall be notified of the date, time and place of the continued hearing;
  - (i) To request that Parties submit post-hearing briefs and/or proposed Findings; and
  - (j) To take notice of facts judicially noticed by courts, as well as general, technical or scientific facts within the Board's specialized knowledge.

1.22: Hearing Examiner's Decision

- (1) After the hearing, the Hearing Examiner's decision shall contain the following:
  - (a) Statement of the issues involved in the hearing;
  - (b) Summary of evidence, including credibility determinations, if appropriate;
  - (c) Specific findings of fact on all relevant disputed factual matters;
  - (d) Rulings of law on all relevant disputed legal issues;
  - (e) Conclusions drawn from the findings of fact and rulings of law if appropriate; and
  - (f) Final registration determination and classification level.
- (2) As the hearing is a *de novo* proceeding, the Hearing Examiner may, in a manner consistent with 803 CMR 1.37A, find that the offender has no obligation to register as a sex offender. The Hearing Examiner may also maintain, decrease, or increase the Board's recommended classification level.
- (3) In reaching a decision, the Hearing Examiner shall consider the relevant credible evidence and reasonable inferences derived therefrom to determine:
  - (a) the offender's risk of reoffense;
  - (b) the offender's dangerousness as a function of the severity and extent of harm the offender would likely present to the public in the event of reoffense; and
  - (c) in consideration of the foregoing, whether and to what degree public access to the offender's personal and sex offender information, pursuant to M.G.L. c. 6, § 178K, is in the interest of public safety.

Where applicable, the Hearing Examiner shall apply such facts to the statutory factors as are set forth in M.G.L. c. 6, § 178K(1)(a) through (l). In determining the Final Classification, the Hearing Examiner shall be guided by the definitions, explanations, principles, and authorities contained in the Factors set forth in 803 CMR 1.40 and shall not be bound by the Board's Recommendation Process, Classification Worksheet, or recommended finding as described in 803 CMR 1.39.

- (4) If the Hearing Examiner becomes unavailable before completing his decision, the Chair shall appoint a successor to assume the case and render the decision. If the presentation of evidence has been completed and the record is closed, the successor shall decide the case on the basis of the record. Otherwise, the successor may either proceed with the hearing or require the presentation of evidence from the beginning. The Board shall provide the successor and the Parties with a copy of the transcript, or completed portions thereof, without cost.

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1.23: Hearing Examiner's Decision as the Final Sex Offender Registry Board Decision

(1) The Hearing Examiner's decision shall be the final Sex Offender Registry Board decision, except as expressly provided in 803 CMR 1.23.

(2) Judicial review, pursuant to M.G.L. c. 30A, § 14, is not available to the Board to correct errors in a Hearing Examiner's decision. Pursuant to 803 CMR 1.23, the Board shall be authorized to review a Hearing Examiner's final decision or any finding or ruling within the final decision, when any of the following grounds are presented:

- (a) the decision is based upon an error of law;
- (b) the decision is not in conformity with procedural due process standards;
- (c) the decision is unsupported by substantial evidence;
- (d) the decision is the result of arbitrary or capricious conduct;
- (e) the decision is the result of an abuse of discretion; or
- (f) the decision is not in conformity with the law.

(3) To request a review of a Hearing Examiner's decision, the Board's General Counsel or the General Counsel's designee shall file a written request for review. The written request shall state the grounds for seeking review, as outlined in 803 CMR 1.23 (2)(a) through (f), the reason that review is appropriate, and cite to the information from the hearing record which supports the review requested. The written request for review shall be filed with the Chair or the Chair's designee within ten days of the issuance date of the Hearing Examiner's decision. Notice of the submission of a written request for review shall be made pursuant to 803 CMR 1.25(1). The offender or his authorized representative may file a response to the written request for review within ten days of receipt, addressing any of the matters contained in the request. The filing of a written request for review shall stay the effect of the Hearing Examiner's decision for purposes of judicial review, registration and dissemination.

The majority of the Board's sitting members shall determine whether to grant the written request for review. Notice of the Board's determination on whether to grant the written request for review shall be made pursuant to 803 CMR 1.25(1). If the Board grants the written request for review, the Hearing Examiner's decision shall continue to be stayed for purposes of judicial review, registration and dissemination.

(4) If the Board grants review, the classification hearing shall be deemed re-opened. The Board may decide the issue based solely on the written request for review and the offender's response, or may direct the parties to file additional memoranda of law before deciding the issue or issues before it. The majority of the Board's sitting members shall determine whether the Hearing Examiner's final decision was in error. The Board shall issue a written decision and shall notify the parties of its decision pursuant to 803 CMR 1.25(1).

If the Board finds no error, the Hearing Examiner's decision shall become final. Notice of the Board's finding shall be made pursuant to 803 CMR 1.25(1). The date that the notice is received by the offender or his authorized representative shall govern the time for filing a petition for judicial review, the time for registration and the dissemination of offender information as mandated by the sex offender registry laws.

(5) If the Board determines that the Hearing Examiner's decision was in error, in whole or in part, the Board shall proceed in one of the two ways set forth in 803 CMR 1.23(5)(a) and (b):

- (a) The Board may issue a decision setting aside a portion or portions of the Hearing Examiner's decision. In such cases, the Board shall issue a decision stating with specificity the portion or portions that it is setting aside and its reasons for setting them aside. The Board's decision shall incorporate by reference the portions of the original Hearing Examiner's decision that it intends to uphold. The Board's revised decision shall be the final decision. Notice of the Board's revised decision shall be made pursuant to 803 CMR 1.25(1). The date that the revised decision is received by the offender or his authorized representative, shall govern the time for filing a petition for judicial review, the time for registration and the dissemination of offender information as mandated by the sex offender registry laws.



1.23: continued

(b) The Board may issue a decision setting aside the Hearing Examiner's decision in its entirety. In such cases, the Board shall issue a decision stating with specificity the reasons for its action and remand the case back to the Hearing Examiner. Notice of the Board's decision shall be made pursuant to 803 CMR 1.25(1). The Hearing Examiner's new decision shall be the final decision. Notice of the Hearing Examiner's new decision shall be made pursuant to 803 CMR 1.25(1). The date that the new decision is received by the offender or his authorized representative, shall govern the time for filing a petition for judicial review, the time for registration and the dissemination of offender information as mandated by the sex offender registry laws.

The Board's General Counsel or General Counsel's designee may file a written request for Board review of the Hearing Examiner's new decision if, in the opinion of the General Counsel or the General Counsel's designee, the Hearing Examiner's new decision fails to correct the error or errors that caused the decision to be remanded. The same process set forth in 803 CMR 1.23(3) shall apply if a written request for review is submitted by the General Counsel or General Counsel's designee at this stage.

(6) All documents generated during the review process described in 803 CMR 1.23 shall be included in the record that is filed by the Board's attorney in any judicial review case initiated pursuant to M.G.L. c. 30A, § 14.

(7) 803 CMR 1.23 shall apply to Hearing Examiner decisions issued at any time after December 11, 2008.

1.24: The Record

(1) All documents, testimony and other evidence offered and accepted into evidence shall become part of the record. Evidence offered but not accepted shall be included in the record for purposes of judicial review. For purposes of judicial review, the record shall also include the final Sex Offender Registry Board decision.

(2) All evidence and testimony at the hearing shall be recorded electronically, digitally, stenographically, or by any other recording device deemed necessary or appropriate by the Board, in its discretion. The Board shall incur the cost of recording. Pursuant to M.G.L. c. 30A, § 11(6), transcripts shall be made and supplied to the sex offender or his Authorized Representative, upon written request, at the offender's expense, in accordance with procedures the Board may establish. A sex offender determined to be indigent in accordance with 803 CMR 1.08 shall, upon written request, receive a transcript at no cost.

(3) Corrections to the transcript shall be permitted in the discretion of the Hearing Examiner. The Hearing Examiner may accept corrections by agreement of the Parties, or if the Parties cannot agree, the Hearing Examiner may accept recommended corrections from each Party to determine what corrections, if any, are necessary.

(4) The record shall not be available to the public.

1.25: Notification of the Final Sex Offender Registry Board Decision

(1) Notification of the final Sex Offender Registry Board decision shall be mailed to the sex offender and his Authorized Representative as soon as practicable. If the sex offender is a Juvenile at the time of notification, such notification shall also be mailed to:

(a) his legal guardian; and

(b) the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies.

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(2) If the final Sex Offender Registry Board decision results in the sex offender being relieved of his obligation to register as set forth in M.G.L. c. 6, § 178K, said notification shall inform the sex offender of such relief. The Board shall promptly remove information pertaining to the offender from the Sex Offender Registry.

(3) If the final Sex Offender Registry Board decision results in the sex offender being classified as a Level 1 Offender, said notification shall also inform the sex offender of his obligations as set forth in M.G.L. c. 6, § 178F and 178Q. A Level 1 Offender shall also be subject to the registration requirements as set forth in 803 CMR 1.28.

(4) If the final Sex Offender Registry Board decision results in the sex offender being classified as a Level 2 Offender, said notification shall direct the sex offender to report to the local police department within two calendar days of Receipt for registration in accordance with M.G.L. c. 6, § 178F ½ and 178Q. A Level 2 Offender shall also be subject to the registration requirements as set forth in 803 CMR 1.29.

(5) If the final Sex Offender Registry Board decision results in the sex offender being classified as a Level 3 Offender, said notification shall direct the sex offender to report to the local police department within two calendar days of Receipt for registration in accordance with M.G.L. c. 6, § 178F ½ and 178Q. A Level 3 Offender shall also be subject to the registration requirements as set forth in 803 CMR 1.30.

1.26: Judicial Review

Notifications pursuant to 803 CMR 1.25 shall inform the sex offender or his Authorized Representative of his right to seek judicial review of such decision. The sex offender may exercise his right to judicial review within 30 calendar days from the date of Receipt of the final Sex Offender Registry Board decision. The request for judicial review shall be filed in accordance with M.G.L. c. 30A, § 14. Pursuant to M.G.L. c. 6, § 178M and M.G.L. c. 30A, § 14, the request for judicial review shall not stay the effect of the final Sex Offender Registry Board decision. 803 CMR 1.26 shall not apply to Board decisions that are final pursuant to 803 CMR 1.13.

1.27: Transmission to Law Enforcement of Final Sex Offender Registry Board Decision

(1) If the Board's decision is to relieve or terminate a sex offender's obligation to register, the Board shall promptly remove information pertaining to said sex offender from the sex offender registry and notify:

- (a) Police departments in municipalities where such sex offender lives and works, or where the sex offender intends to live and work upon release and where the offense was committed;
- (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at an Institution of Higher Learning, where the sex offender works and/or attends an Institution of Higher Learning or where the sex offender intends to work and/or attend an Institution of Higher Learning upon release; and
- (c) the Federal Bureau of Investigation.

(2) If the Board's decision is that a sex offender shall register and a classification level is assigned, the Board shall, within three business days of reaching the decision, transmit the registration data and classification designation by United States postal service, facsimile, electronic, or any other reasonable means, to:

- (a) Police departments in municipalities where such sex offender lives and works, or where the sex offender intends to live and work upon release and where the offense was committed;
- (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at an Institution of Higher Learning, where the sex offender works and/or attends an Institution of Higher Learning or where the sex offender intends to work and/or attend an Institution of Higher Learning upon release; and
- (c) the Federal Bureau of Investigation.

1.28: Registration Requirements and Release of Level 1 Offender Information by Police

(1) A sex offender required to register and Finally Classified by the Board as a Level 1 Offender shall register annually by mail with the Board, on the form approved by the Board. Such sex offender shall annually verify by mail that the registration data on file with the Board remains true and accurate. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide Independent Written Verification of the address at which he is registered or, if changing address, will be registered. A Level 1 Offender who lists a homeless shelter as his residence shall also verify registration data by mail every 90 calendar days with the Board.

(2) Sex Offender Registration Fee.

- (a) Upon registering pursuant to 803 CMR 1.28(1), the offender shall pay an annual sex offender registration fee of \$75 to the Board.
- (b) The Board shall not require the offender to pay this sex offender registration fee, or subsequent annual fees, until the offender has:
  - 1. waived his right to petition for an evidentiary hearing to challenge his duty to register as a sex offender as set forth in M.G.L. c. 6, § 178L; or
  - 2. completely exhausted the legal remedies made available to him to so challenge his duty to register pursuant to M.G.L. c. 6, § 178M and has not prevailed in his attempt to obtain relief of his registration duty.
- (c) An offender's duty to pay the fee shall end upon the termination of the offender's duty to register as a sex offender as set forth in M.G.L. c. 6, § 178G and 803 CMR 1.37B or upon the Court finding that the offender has no obligation to register.

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(d) The offender may request, on a form approved by the Board and submitted to the Board at the time he submits his registration form to the Board, that the Board waive payment of the sex offender registry fee. The Board may waive the fee if it determines that payment would constitute an undue hardship on the offender or his family due to limited income, employment status, or any other relevant factor. The Board shall use the indigency standards as developed pursuant to M.G.L. c. 211D to determine whether the payment of the fee constitutes an undue hardship on the offender. If the Board determines that payment of the fee is not a hardship, the Board shall notify the offender informing the offender that he must pay the fee within ten days of receiving the notice. If the Board determines that payment of the fee is a hardship, it shall waive the fee for the offender for only that year, but, the offender may renew his request for a waiver when payment of his next annual fee is due.

(3) The public shall not have access to sex offender registry information pertaining to a Level 1 Offender. The police or Board may, however, release such information identifying the Level 1 Offender to the Department of Correction, any county correctional facility, the Department of Youth Services, the Department of Social Services, the Parole Board, the Office of the Commissioner of Probation and the Department of Mental Health, all city and town police departments, including the Department of State Police, and the Federal Bureau of Investigation. Upon the request of a victim who submitted a written victim impact statement for consideration pursuant to M.G.L. c. 6, § 178K(1)(k), the Board may inform the victim of the offender's final registration and classification determination, as well as identify the city or town where the offender lives, works, or attends an Institution of Higher Learning.

1.29: Registration Requirements and Release of Level 2 Offender Information by Police

(1) A sex offender required to register and Finally Classified by the Board as a Level 2 Offender shall appear in person within two calendar days of Receipt of the Board's notification pursuant to 803 CMR 1.25 at the local police department in the city or town in which he lives, or if he does not reside in the Commonwealth, in the city or town in which he works or in which he attends an Institution of Higher Learning to verify that the registration data on file remains true and accurate. At such time, the offender's photograph and fingerprints shall be updated. In addition, annually during the month of the offender's birth, such sex offender shall be required to appear at the local police department with the verification form provided by the Board. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide Independent Written Verification of the address at which he is registered or, if changing address, will be registered. A Level 2 Offender who lists a homeless shelter as his residence shall appear in person at the local police department to verify registration data every 90 calendar days.

(2) Sex Offender Registration Fee.

(a) Upon receiving notice of his obligation to register pursuant 803 CMR 1.25(4), but no later than 30 days after registering with the local police department, the offender shall pay a sex offender registration fee of \$75 to the Board in order to complete the registration process.

(b) The Board shall not require the offender to pay this sex offender registration fee, or subsequent annual fees, until the offender has:

1. waived his right to petition for an evidentiary hearing to challenge his duty to register as a sex offender as set forth in M.G.L. c. 6, § 178L; or
2. has completely exhausted the legal remedies made available to him to so challenge his duty to register pursuant to M.G.L. c. 6, §§ 178L and 178M and has not prevailed in his attempt to obtain relief of his registration duty.

(c) An offender's duty to pay the fee shall end upon the termination of the offender's duty to register as a sex offender as set forth in M.G.L. c. 6, § 178G and 803 CMR 1.37B or upon the Court finding that the offender has no obligation to register.

1.29: continued

(d) The offender may request, on a form approved by the Board and submitted to the Board no later than 30 days after the date he registered with the local police department, that the Board waive payment of the sex offender registry fee. The Board may waive the fee if it determines that payment would constitute an undue hardship on the offender or his family due to limited income, employment status, or any other relevant factor. The Board shall use the indigency standards as developed pursuant to M.G.L. c. 211D to determine whether the payment of the fee constitutes an undue hardship on the offender. If the Board determines that payment of the fee is not a hardship, the Board shall notify the offender informing the offender that he must pay the fee within ten days of receiving the notice. If the Board determines that payment of the fee is a hardship, it shall waive the fee for the offender for only that year, but, the offender may renew his request for a waiver when payment of his next annual fee is due.

(3) The public shall have access to sex offender registry information pertaining to a Level 2 Offender in accordance with 803 CMR 1.29(3)(a) and (b):

(a) The person making the inquiry must be 18 years of age or older. Information may only be given to a person for his own protection or for the protection of a child under the age of 18 or another person for whom the requesting person has responsibility, care or custody. The person making the inquiry must appear in person at a city or town police department and present proper identification.

(b) The person making the inquiry must complete and sign a record of inquiry, designed by the Board, which includes the following information:

1. the name and address of person making the inquiry;
2. the person or geographic area or street which is the subject of the inquiry;
3. the reason for the inquiry; and
4. the date and time of the inquiry.

(4) The person making the inquiry may either:

(a) Identify a specific individual by name or provide personal identifying information sufficient to allow the police to identify the subject of the inquiry; or

(b) Inquire whether any sex offenders live, work or attend an Institution of Higher Learning within the same city or town as a specific address including, but not limited to, a residential address, a business address, school, after-school program, day care center, playground, recreational area or other identified address and inquire in another city or town whether any sex offenders live, work or attend an Institution of Higher Learning within that city or town, upon a reasonable showing that the sex offender registry information is requested for his own protection or for the protection of a child under age 18 or another person for whom the inquirer has responsibility, care or custody; or

(c) Inquire whether any sex offenders live, work or attend an Institution of Higher Learning on a specific street within the city or town in which such inquiry is made; or

(d) If the police department is located in a city or town with more than one zip code area, inquire whether any sex offenders live, work or attend an Institution of Higher Learning within a specified zip code area. In the City of Boston, such inquiry may be made by specified police district.

(5) When a search of the Sex Offender Registry results in identification of a sex offender, the police shall disseminate to the person making the inquiry the following information:

- (a) name of the sex offender;
- (b) home address;
- (c) work address;
- (d) the name and address of the Institution of Higher Learning where the sex offender works or is enrolled as a student;
- (e) offense(s) for which he was convicted or adjudicated and the date(s) of conviction or adjudication;
- (f) sex offender's age, sex, race, height, weight, eye and hair color; and
- (g) photograph of the sex offender, if available.

The police or the Board shall not release information identifying the victim by name, address or relation to the sex offender.

Police departments in a city or town with more than one postal zip code may, if the inquiry is qualified to a particular postal zip code area, provide only that information requested. In the City of Boston, said inquiries may be limited by the police to one or more police districts.

1.30: Registration Requirements and Release of Level 3 Offender Information by Police

(1) A sex offender required to register and Finally Classified by the Board as a Level 3 Offender shall appear in person within two calendar days of Receipt of the Board's notification pursuant to 803 CMR 1.25 at the local police department in the city or town in which he lives, or if he does not reside in the Commonwealth, in the city or town in which he works or in which he attends an Institution of Higher Learning to verify that the registration data on file remains true and accurate. At such time, the offender's photograph and fingerprints shall be updated. In addition, annually during the month of the offender's birth, such sex offender shall be required to appear at the local police department with the verification form provided by the Board. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide Independent Written Verification of the address at which he is registered or, if changing address, will be registered. A Level 3 Offender who lists a homeless shelter as his residence shall appear in person at the local police department to verify registration data every 90 calendar days.

(2) Sex Offender Registration Fee.

(a) Upon receiving notice of his obligation to register pursuant 803 CMR 1.25(5), but no later than 30 days after registering with the local police department, the offender shall pay a sex offender registration fee of \$75 to the Board in order to complete the registration process.

(b) The Board shall not require the offender to pay this sex offender registration fee, or subsequent annual fees, until the offender has:

1. waived his right to petition for an evidentiary hearing to challenge his duty to register as a sex offender as set forth in M.G.L. c. 6, § 178L; or
2. has completely exhausted the legal remedies made available to him to so challenge his duty to register pursuant to M.G.L. c. 6, §§ 178L and 178M and has not prevailed in his attempt to obtain relief of his registration duty.

(c) An offender's duty to pay the fee shall end upon the termination of the offender's duty to register as a sex offender as set forth in M.G.L. c. 6, § 178G and 803 CMR 1.37B or upon the Court finding that the offender has no obligation to register.

(d) The offender may request, on a form approved by the Board and submitted to the Board no later than 30 days after the date he registered with the local police department, that the Board waive payment of the sex offender registry fee. The Board may waive the fee if it determines that payment would constitute an undue hardship on the offender or his family due to limited income, employment status, or any other relevant factor. The Board shall use the indigency standards as developed pursuant to M.G.L. c. 211D to determine whether the payment of the fee constitutes an undue hardship on the offender. If the Board determines that payment of the fee is not a hardship, the Board shall notify the offender informing the offender that he must pay the fee within ten days of receiving the notice. If the Board determines that payment of the fee is a hardship, it shall waive the fee for the offender for only that year, but, the offender may renew his request for a waiver when payment of his next annual fee is due.

(3) The public shall have access to the information regarding a Level 3 Offender in accordance with the provisions applicable to Level 2 Offenders, as well as in accordance with 803 CMR 1.33. Level 3 community notification shall require the police department to notify organizations in the community that are likely to encounter such sex offender and individual members of the public who are likely to encounter such sex offender.

(4) Neighboring police districts shall share sex offender registration information of Level 3 Offenders and may inform the residents of their municipality of a sex offender they are likely to encounter who resides in an adjacent city or town. The police or the Board shall actively disseminate in such time and manner as such police department or Board deems reasonably necessary the following information:

- (a) name of the sex offender;
- (b) home address;
- (c) work address;
- (d) the name and address of the Institution of Higher Learning where the sex offender works or is enrolled as a student;
- (e) offense(s) for which he was convicted or adjudicated and the date(s) of the conviction or adjudication;

1.30: continued

- (f) sex offender's age, sex, race, height, weight, eye and hair color; and
- (g) photograph of the sex offender, if available.

The police or the Board shall not release information identifying the victim by name, address or relation to the sex offender.

1.31: Sexually Violent Predators

(1) If an offender is finally given a Level 3 classification and a Board Member also recommends that such sex offender should be designated a sexually violent predator, the Full Board shall review such recommendation and, if applicable, transmit a report to the sentencing court which includes the specific identification of the sexually violent offense committed by such sex offender, and the basis for the Full Board's recommendation that the offender suffers from a Mental Abnormality or Personality Disorder that makes the offender likely to engage in predatory sexually violent offenses.

(2) In making a recommendation to the sentencing court that such an offender is a sexually violent predator, the Full Board shall review the documents in an offender's case file and, where applicable, the evidence and testimony introduced at a hearing conducted pursuant to 803 CMR 1.07 through 1.26 to determine whether the sex offender has been diagnosed by a licensed mental health professional as suffering from a Mental Abnormality or Personality Disorder, or, in the absence of a diagnosis, whether the offender's case presents specific facts and circumstances consistent with the attributes establishing a Mental Abnormality or Personality Disorder.

(3) Where the sentencing court determines that such sex offender is a sexually violent predator, dissemination of the sexually violent predator's registration data shall be in accordance with the community notification required for a Level 3 Offender, except that notification shall occur every 90 calendar days. In addition, such dissemination shall also include such sex offender's designation as a sexually violent predator.

(4) A sex offender designated as a sexually violent predator shall, in addition to annual verification, appear in person every 90 calendar days at the local police department to verify the registration data on file. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide Independent Written Verification of the address at which he is registered or, if changing address, will be registered.

1.32: Release of Offender Information by the Sex Offender Registry Board

(1) A person 18 years of age or older may make a written request for sex offender registry information from the Board for his own protection, or for the protection of a child under the age of 18, or another person for whom the requesting person has responsibility, care, or custody. The Board, upon receiving the request that identifies an individual by name, date of birth or sufficient personal identifying characteristics, shall provide a report identifying whether the individual is a sex offender who the Board has determined to have an obligation to register and who has been finally classified as a Level 2 or Level 3 Offender. The report shall also include the offenses for which the sex offender was convicted or adjudicated and the dates of such convictions or adjudications. Any records of inquiry shall be kept confidential, except that information may be disseminated to assist or defend in a criminal prosecution. The Board shall not release information identifying the victim by name, address or relation to the sex offender.

(2) Notwithstanding any provision to the contrary, the Board may actively disseminate the following information pertaining to a Level 3 Offender, in whole or in part, in such time, place, manner or means as it, in its sole discretion, deems reasonable and proper:

- (a) the name of the sex offender;
- (b) the offender's home address;
- (c) the offender's work address;
- (d) the name and address of the Institution of Higher Learning where the sex offender works or is enrolled as a student;
- (e) the offense for which the offender was convicted or adjudicated and the date of the conviction or adjudication;

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1.32: continued

- (f) the sex offender's age, sex, race, height, weight, eye and hair color; and
- (g) whether the sex offender has been designated a sexually violent predator; and
- (h) a photograph of the sex offender, if available.

The Board shall not release information identifying the victim by name, address or relation to the sex offender.

(3) Internet Dissemination of Level 3 Sex Offender Information.

(a) The Board shall make the following information pertaining to all Level 3 Offenders available for inspection by the general public at any time without charge or subscription on the Board's Internet Web site:

- 1. the name of the sex offender;
- 2. the sex offender's home address;
- 3. the offender's work address;
- 4. the offense for which the sex offender was convicted or adjudicated and the date of the conviction or adjudication;
- 5. the sex offender's age, sex, race, height, weight, eye and hair color;
- 6. a photograph of the sex offender, if available;
- 7. whether the sex offender has been designated a sexually violent predator; and
- 8. whether the sex offender is in compliance with the registration obligations of M.G.L. c. 6, §§ 178C through 178Q.

(b) This information shall be made available on the Board's Web site through a database known as the "Level 3 Sex Offender Internet Database." The information contained in the Level 3 Sex Offender Internet Database shall be created and updated on a regular basis from the Sex Offender Registry but shall be kept physically separate from the Sex Offender Registry. The information contained in the Level 3 Sex Offender Internet Database shall include the information contained in 803 CMR 1.32(3)(1) through (8) and shall not include any information:

- 1. pertaining to unclassified, Level 1, or Level 2 sex offenders;
- 2. identifying any victims by name, address or relation to Level 3 sex offenders;
- 3. relating to requests for registration data under sections M.G.L. c. 6, §§ 178I through 178J and 803 CMR 1.29, 1.30 and 1.32(1).

(c) All information provided to the general public through the Level 3 Sex Offender Internet Database on the Board's Internet Web site shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of a sex offender and the punishment for threatening to commit a crime under M.G.L. c. 275, § 4.

(d) The Board shall develop and implement policies, procedures, and protocols to update and maintain the Level 3 Sex Offender Internet Database in order to:

- 1. validate the accuracy, integrity, and security of information contained in the Level 3 Sex Offender Internet Database;
- 2. ensure the prompt and complete removal from the Level 3 Sex Offender Internet Database of registration data for sex offenders whose duty to register has terminated or expired under M.G.L. § 178G, 178L, or 178M or any other law or order of any Court, and
- 3. protect against the inaccurate, improper or inadvertent publication of registration data on the Internet.

1.33: Community Notification

(1) The police department shall notify organizations in the community that are likely to encounter an offender Finally Classified as a Level 3 Offender or a sexually violent predator, and notify individual members of the public who are likely to encounter such an offender. Organizations in the community that are likely to encounter the sex offender include, but are not limited to, public and private organizations, areas and establishments which provide services of any type to children, the elderly, or other vulnerable members of the population.



## 1.33: continued

- (2) Community notification shall require notification by the police department to all schools in the community. The chief of the police department, in his discretion, may notify other organizations, such as day care centers, youth/recreational programs, and organizations providing elder services, as deemed necessary to protect the public safety. The chief of the police department, in his discretion, may put the information contained in 803 CMR 1.30(4)(a) through (g) for Level 3 Offenders who live, work, and/or attend Institutions of Higher Learning in the community on the police department's Internet Web site, provided that such Web site shall comply with 803 CMR 1.32(3)(b) through (d) to the same extent as the Board's Web site, it shall be regularly updated with information from the Sex Offender Registry, and the chief shall develop and implement, for the department's Web site, policies, procedures, and protocols such as those described in 803 CMR 1.32(3)(d). The chief may also, or alternatively, include on the department's Web site a link to the Board's Web site for Level 3 Offenders described in 803 CMR 1.32(3).
- (3) The method of community notification shall include, but is not limited to:
- (a) publication of the information in local newspapers and/or public announcement via local cable television; and
  - (b) posting the information in the local town or city hall, libraries, and similar publicly accessible areas, as determined by the chief of police.
- (4) Police departments shall actively disseminate Level 3 Offender information at least once annually, provided, however, that if a Level 3 Offender has been designated a sexually violent predator, community notification shall occur every 90 calendar days. Community notification shall also occur each time a Level 3 Offender changes his home or work address; enrolls as a student or obtains employment at an Institution of Higher Learning; or transfers from an Institution of Higher Learning. The Board may, in its discretion and pursuant to 803 CMR 1.32(2), require or facilitate additional active dissemination if deemed necessary to protect the public.

1.34: Applicable Timelines for Community Notification

Level 3 Offender dissemination pursuant to community notification shall occur within two business days from the police department receiving the transmission from the Board. The Board, however, encourages immediate notification whenever practical.

1.35: Applicable Timelines for Individual Requests for Offender Information

Responses to requests by the public pursuant to M.G.L. c. 6, § 178J and 803 CMR 1.29 and 1.30 shall occur within two business days of receiving the request. The Board, however, encourages immediate notification whenever practical. When a member of the public provides a request that identifies a particular sex offender, and the police department is aware that said offender is Finally Classified as a Level 3 Offender or sexually violent predator, the police department shall disseminate immediately the information to the requesting individual.

1.36: Unlawful Use of Sex Offender Registry Information

All dissemination of sex offender registry information made pursuant to 803 CMR 1.29 through 1.33 shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender. The police or Board shall not release information identifying the victim by name, address, or relation to the sex offender.

1.37A: Motion to Relieve Registration Obligation

- (1) Pursuant to M.G.L. c. 6, § 178K(2)(d), a sex offender may submit to the Board a written motion for relief from a registration obligation, in the form of a letter or petition:
- (a) prior to or upon submitting the registration form pursuant to 803 CMR 1.04;
  - (b) upon submitting Documentary Evidence pursuant to 803 CMR 1.05; or

1.37A: continued

- (c) at least ten business days before the date of a hearing scheduled pursuant to 803 CMR 1.09. The Board shall not consider any motion for relief submitted after a registration and classification determination has become final pursuant to 803 CMR 1.07, 1.13, 1.23 or M.G.L. c. 6, § 178L(2). Rather, the Board shall treat any motion for relief filed after a registration and classification determination has become final as a motion for termination and/or reclassification and will follow the process for termination and/or reclassification requests pursuant to 803 CMR 1.37B and/or 1.37C.
- (2) A sex offender is not eligible for relief, and the Board or the Hearing Examiner shall summarily deny a motion for relief if the offender:
  - (a) has been determined to be a sexually violent predator;
  - (b) has been convicted of two or more Wetterling Offenses committed on different occasions;
  - (c) has been convicted of a sexually violent offense; or
  - (d) has been convicted of a sex offense involving a child, whose offense was sexual in nature, and who has not already registered pursuant to M.G.L. c. 6, § 178E, as enacted on September 10, 1999, for at least ten years.
- (3) If the sex offender has applied for relief pursuant to 803 CMR 1.37A(1)(a) or (b) and is eligible for relief, the Board shall consider the motion as part of its overall determination of the offender's recommended registration status and classification pursuant to 803 CMR 1.04 through 1.06. The offender will be notified of the Board's decision regarding the application pursuant to 803 CMR 1.07 through 1.08. If the Board concludes that the circumstances of the sex offender's offense in conjunction with the offender's criminal history do not indicate a risk of reoffense or a danger to the public and the reasons therefore, the Board may, upon making specific written findings relieve the sex offender of any further obligation to register.
- (4) If the Board denies the sex offender's request for relief, and the offender has requested a hearing, or the offender has applied for relief pursuant to 803 CMR 1.37A(1)(c), the hearing shall proceed pursuant to 803 CMR 1.09 through 1.26. Additionally, at the hearing, the sex offender shall have the burden to prove by a Preponderance of the Evidence that he is eligible for relief and that the circumstances of the sex offender's offense in conjunction with the offender's criminal history do not indicate a risk of reoffense or a danger to the public. In determining the sex offender's application for relief, the Hearing Examiner shall consider, in addition to the factors described in 803 CMR 1.22(3), the presence or absence of any physical harm caused by the offense and whether the offense involved consensual conduct between adults.

1.37B: Motion to Terminate Registration Obligation

- (1) Pursuant to the provisions of M.G.L. c. 6, § 178G, a sex offender, whose registration and classification determination has become final pursuant to 803 CMR 1.07, 1.13, 1.23 or M.G.L. c. 6, § 178L(2), may, within ten years following conviction, adjudication or release from all custody or supervision, whichever is later, file a written motion with the Board to terminate the offender's obligation to register. The motion shall set forth the offender's full name, date of birth, address, sex offender number (SON), name and address of legal representative (if applicable), and name and address of legal guardian (if applicable). Such motions shall be reviewed by the Full Board. The motion shall include proof, by clear and convincing evidence, that the sex offender has not committed a sex offense within ten years following the date of conviction, adjudication or release from all custody or supervision, whichever last occurs. In addition, the sex offender shall provide clear and convincing evidence that he is not likely to pose a danger to the safety of others. Consideration of motions to terminate shall be limited to new and updated information not available at the time of the original registration and classification. The Board shall not consider any motion for termination submitted before a registration and classification determination has become final pursuant to 803 CMR 1.07, 1.13, 1.23 or M.G.L. c. 6, § 178L(2). Rather, the Board shall treat any motion for termination filed before a registration and classification determination has become final as a request for relief and will follow the process for relief requests pursuant to 803 CMR 1.37A. By filing a motion for termination, the offender authorizes the Board to obtain any information accessible under M.G.L. c. 6, §§ 178E & 178K(3) to assist in its review of the offender's motion.

## 1.37B: continued

(2) If the Board obtains additional information pursuant to 803 CMR 1.37B(1), it shall provide that information to the offender. The offender shall then have 20 business days to submit to the Full Board a response to the additional information obtained pursuant to 803 CMR 1.37B(1) as well as any other information relative to the offender's risk of reoffense and the degree of dangerousness he poses to the public. Within a reasonable time after Receipt of any response or additional information from the offender, the Full Board shall meet to determine whether the offender has provided proof, by clear and convincing evidence, that he has not committed a sex offense within ten years following the date of conviction, adjudication or release from all custody or supervision, whichever last occurs, and, that he is not likely to pose a danger to the safety of others. The Full Board shall decide the motion on the materials submitted and shall not schedule a hearing on the motion. Within a reasonable time, the Full Board shall issue a decision. If a majority of the Full Board approves the motion, the sex offender shall be notified of the termination of his obligation to register. In addition, the Board shall remove information pertaining to him from the sex offender registry and notify law enforcement in accordance with 803 CMR 1.27.

(3) A sex offender is not eligible for termination of a registration obligation, and the Full Board shall summarily deny a motion to terminate if the offender:

- (a) has been determined to be a sexually violent predator;
- (b) has been convicted of two or more Wetterling Offenses committed on different occasions;
- (c) has been convicted of a sexually violent offense; or
- (d) has been convicted of a sex offense involving a child, whose offense was sexual in nature, and who has not already registered pursuant to M.G.L. c. 6, § 178C through 178Q, as enacted on September 10, 1999, for at least ten years.

The Full Board may treat such a motion to terminate as a motion for reclassification pursuant to 803 CMR 1.37C(2).

(4) The Full Board may deny a motion to terminate of any sex offender who, at the time of the filing of the motion, is incarcerated or has pending criminal charges. The Full Board shall deny any motion to terminate if the offender's registration and/or classification level is, at the time of the filing of the motion, under judicial review pursuant to M.G.L. c. 30A, § 14, or on appeal, or on review by the Board as a result of an order by a court of the Commonwealth or a federal court.

(5) If the Full Board denies the offender's motion to terminate, the offender may re-apply for termination three years after the date the Full Board denied the motion. The procedures in 803 CMR 1.37B(1) through (5) shall apply in all subsequent re-applications for termination. Consideration of subsequent motions to terminate shall be limited to any additional information not available in the previous motion(s) to terminate. In denying a motion to terminate, the Full Board may treat a motion to terminate as a motion for reclassification pursuant to 803 CMR 1.37C(2).

1.37C: Motion for Reclassification

(1) The Board recognizes the risk to reoffend and the degree of dangerousness posed by a sex offender may increase or decrease over time. To better serve and protect the public, the Board may, upon Receipt of a written request from a finally classified sex offender or on its own initiative, consider reclassifying a finally classified sex offender.

(2) Offender's Motion for Reclassification.

- (a) No sooner than three years from the date of his Final Classification pursuant to 803 CMR 1.07(3), 803 CMR 1.13 or 803 CMR 1.25, a sex offender finally classified as a Level 2 or 3 sex offender may file a written motion with the Board to re-examine his classification level.
- (b) The Full Board may deny a motion for reclassification of any sex offender who, at the time of the filing of the motion, is incarcerated or has pending criminal charges. The Full Board shall deny any motion for reclassification if the offender's present classification level is, at the time of the filing of the motion, under judicial review pursuant to M.G.L. c. 30A, § 14, or on appeal, or on review by the Board as a result of an order by a court of the Commonwealth or a federal court.

## 1.37C: continued

(c) Consideration of motions for reclassification shall be limited to new and updated information not available at the time of the original classification and shall be reviewed administratively by the Full Board.

(d) The motion shall set forth the offender's full name, date of birth, address, sex offender number (SON), name and address of legal representative (if applicable), name and address of legal guardian (if applicable), the classification level sought, together with the reasons for seeking such determination. The motion shall include proof, by a Preponderance of the Evidence, that the sex offender:

1. has, since release from incarceration, remained at liberty for more than five continuous years; and
2. has not committed or been convicted of a sex offense since either accepting the Board's recommended classification or since his classification hearing. The term conviction as used in this reclassification process shall include an adult conviction or an adjudication as a youthful offender or as a delinquent juvenile by reason of a crime as well as any admission to sufficient facts as to warrant a guilty finding.

(e) In addition, the sex offender's motion for reclassification shall also provide proof, by a Preponderance of the Evidence, that his risk of reoffense and the degree of dangerousness he poses to the public has been reduced through new and updated information on the following Factors for classification found at 803 CMR 1.40:

1. his response to or completion of sex offender treatment (Factors 11, 14, 18, 24);
2. current home situation (Factor 12);
3. physical condition (Factor 13);
4. any new psychological or psychiatric profiles indicating his risk to reoffend (Factors 1, 15);
5. absence of alcohol and drug abuse while at liberty (Factor 16);
6. recent behavior (Factors 22);
7. updated victim impact statement (Factor 23); and
8. new or updated materials submitted by the sex offender (Factor 22).

(f) By filing a motion for reclassification, the offender authorizes the Board to obtain any information accessible under M.G.L. c. 6, §§ 178E & 178K(3) to assist in its review of the offender's motion.

(g) If the Board obtains additional information pursuant to 803 CMR 1.37C(2)(f) it shall mail that information to the offender. The offender shall then have 20 business days to submit to the Full Board a response to the additional information obtained pursuant to 803 CMR 1.37C(2)(f) as well as any other information relative to the offender's risk of reoffense and the degree of dangerousness he poses to the public. Within a reasonable time after Receipt of any response or additional information from the offender, the Full Board shall meet to determine whether the offender has provided proof, by a Preponderance of the Evidence, that his risk of reoffense and the degree of dangerousness he poses to the public has been reduced. The Full Board shall decide the motion on the materials submitted and shall not schedule a hearing on the motion. If a majority of the Full Board approves the motion, the sex offender shall be notified of his new classification level and the offender shall be required to comply with registration requirements as indicated in 803 CMR 1.28 through 1.30. In addition, the Board shall update the information pertaining to him in the sex offender registry and notify law enforcement in accordance with 803 CMR 1.27.

(h) If the Full Board denies the offender's motion, it will notify the offender of its decision and shall also notify the offender that it shall not consider a subsequent motion for reclassification until the passing of three years from the date of the denial of any previous motion for reclassification. Consideration of subsequent motions for reclassification shall be limited to any additional information not available in the previous motion(s) for reclassification.

(i) If the sex offender is a Juvenile at the time of his motion for reclassification, the Board shall also mail all correspondence and notifications to:

1. his legal guardian;
2. the Department of Social Services or the Department of Youth Services if the Juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
3. his most recent attorney of record.

1.37C: continued

(3) Board Seeks Reclassification of Sex Offender.

(a) The Board may, on its own initiative, seek to reclassify any registered and finally classified sex offender upon Receipt of any information that indicates the offender may present an increased risk to reoffend or degree of dangerousness. This could be based on, but not limited to, information indicating the sex offender has:

1. committed a new sex offense;
2. been terminated from sex offender specific treatment;
3. violated the terms or conditions of community supervision;
4. been incarcerated more than 60 consecutive days at any time following his Final Classification;
5. failed to comply with the provisions of M.G.L. c. 6, § 178C through 178Q; or
6. demonstrated a lack of stability in his daily living.

(b) If a majority of the Full Board determines that the offender may present an increased risk to reoffend or degree of dangerousness, it shall authorize a review of the offender's present classification level. The Board shall then notify the sex offender that his classification level is being reevaluated. The Board shall follow the procedures detailed in 803 CMR 1.05 through 1.07 to arrive at a recommended reclassification level for the offender.

(c) If the offender rejects the recommended reclassification level, he may request a hearing that follows the procedures detailed in 803 CMR 1.08 through 1.25.

(d) If the offender is reclassified, the Board shall update the information pertaining to him in the sex offender registry and shall also notify the sex offender and law enforcement agencies that the offender has been reclassified pursuant to 803 CMR 1.25 and 1.27. In addition, the offender shall be required to comply with registration requirements as indicated in 803 CMR 1.28 through 1.30.

1.38: Guidelines for Recommended Classification

(1) The Sex Offender Registration and Community Notification Act set forth in M.G.L. c. 6, §§ 178C through 178Q, requires the Sex Offender Registry Board ("SORB") to promulgate Guidelines for determining each sex offender's level of risk of reoffense and degree of dangerousness posed to the public. (M.G.L. c. 6, § 178K(1)). The Guidelines must provide for three levels of notification depending on the risk of reoffense and the degree of dangerousness posed to the public by the sex offender or for relief from the obligation to register. (M.G.L. c. 6, § 178K(2)). The three levels include level 1 (risk of reoffense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public availability of registration information), level 2 (risk of reoffense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public availability of registration information), and level 3 (risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination of registration information). The offender's risk level determines the amount of information that can be disseminated about him to the public under the M.G.L. c. 6, §§ 178C through 178Q's notification procedures.

(2) M.G.L. c. 6, §§ 178C through 178Q sets forth criteria that must be considered by the SORB in determining risk of reoffense and dangerousness. M.G.L. c. 6, §§ 178C through 178Q also grants the SORB the authority to identify and utilize additional factors and criteria. Numerous factors are specified as indicative of a high risk of reoffense and degree of dangerousness, while others are specified as conditions that minimize risk of reoffense and degree of dangerousness. (M.G.L. c. 6, § 178K(1)(a) through (l)). Based on these statutory factors, and the Board's authority to promulgate guidelines for determining the level of risk of reoffense and the degree of dangerousness posed to the public or for relief from the obligation to register, the Board created 803 CMR 1.40 which describes and defines, as well as provides the principles and authorities for the Factors, the Board considers in making registration and classification determinations.

Additionally, the offender is entitled to present the SORB with Documentary Evidence relative to his risk of reoffense and degree of dangerousness. (M.G.L. c. 6, § 178L(1)(a) and (c)). The SORB is required to prepare a recommended classification of each offender after reviewing any information useful in determining the risk of reoffense and degree of dangerousness, including the Guidelines established by the SORB, the factors and criteria set forth in M.G.L.

## 1.37: continued

c. 6, §§ 178C through 178Q and materials submitted by the offender. (M.G.L. c. 6, § 178L). After a SORB member issues a recommended classification, the offender is notified of the result. At that time, he may accept the recommendation or reject it and exercise his right to an individualized, evidentiary hearing before a Hearing Examiner.

(3) The registration and classification process is, essentially, a two stage process. In the first stage, the Board makes a recommendation regarding the offender's duty to register and classification level which the sex offender can accept or reject. The Board shall develop and implement a Recommendation Process that includes policies, procedures, protocols, and objective standards to expeditiously and fairly evaluate offenders at this recommendation stage. The Recommendation Process shall also include 803 CMR 1.04 through 1.07 and 1.38 through 1.40 regarding recommended registration and classification determination.

(4) The offender may reject the Board's recommendation by requesting a *de novo* hearing. The matter then goes to a second stage process wherein the offender is provided an individualized hearing conducted pursuant to 803 CMR 1.07 through 1.26, at which all relevant evidence is evaluated anew by a disinterested Hearing Examiner. Since, in requesting the hearing, the offender shall be deemed to have rejected the Board's recommendation, and, to ensure that the sex offender is provided an additional opportunity to present any relevant evidence bearing on his obligation to register and classification level, the Hearing Examiner shall not be bound by the Board's Recommendation Process, Classification Worksheet, or recommended finding as described in 803 CMR 1.39. Rather, the Hearing Examiner shall base his decision on the totality of all the relevant evidence introduced at the offender's individualized hearing pursuant to the standard in 803 CMR 1.22(3).

1.39: General Principles

These Guidelines will discuss and explain the specific Factors (803 CMR 1.40) and general principles associated with each factor and criteria set forth in M.G.L. c. 6, §§ 178C through 178Q. In developing the Guidelines, the SORB adhered to the following general principles:

(1) A sex offender shall be required to register if the SORB determines that the following four criteria apply: his criminal history indicates at least one conviction or adjudication for a sex offense as defined in M.G.L. c. 6, § 178C; the offense was sexual in nature; he lives, works or attends an Institution of Higher Learning in Massachusetts; and he currently poses a danger. In determining whether a sex offender currently poses a danger, the SORB shall review such matters as: the offender's criminal history; the circumstances of the sex offense; the presence or absence of physical harm caused by the offense; whether the offense involved consensual conduct between adults; and other matters that demonstrate whether or not the offender poses a risk to reoffend.

The SORB shall review information relative to the criteria set forth in M.G.L. c. 6, §§ 178C through 178Q to determine whether the four registration criteria apply to the sex offender. If the SORB determines that any one of the four criteria do not apply to the sex offender, he shall be relieved of his duty to register in Massachusetts. This process shall not apply to motions filed pursuant to 803 CMR 1.37B and 1.37C to terminate a sex offender's obligation to register or reclassify the sex offender. If the SORB determines that a sex offender has satisfied each of the four criteria, he shall be assigned a recommended registration determination and classification level.

(2) The SORB shall, pursuant to its authority under M.G.L. c. 6, § 178K(1), develop a Recommendation Process which shall include a review of the factors enumerated in M.G.L. c. 6, § 178K(1)(a) through (l) and further explained and defined in 803 CMR 1.40. The Board shall also develop and approve a Classification Worksheet for this purpose. The blank Classification Worksheet and the policies, procedures, protocols, and objective standards the Board adopts as its Recommendation Process shall be made generally available and available upon request.

(3) The Registration Process shall require the SORB to review the information in an offender's case file prior to completing the Classification Worksheet. Information may be derived from the materials submitted by the offender, other self-reports of the sex offender, victim impact statements, and any other reliable information the Recommendation Process deems useful in rendering a recommended registration and classification determination.

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In making its classification recommendation, the SORB will apply each of the factors set forth in M.G.L. c. 6, § 178K(1)(a) through (l) and explained at 803 CMR 1.40 to the information obtained regarding the offender to determine:

- (a) the offender's risk of reoffense;
  - (b) the offender's dangerousness as function of the severity and extent of harm the offender would likely present to the public in the event of reoffense; and
  - (c) in consideration of the foregoing, whether and to what degree public access to the offender's personal and criminal history information, pursuant to M.G.L. c. 6, § 178K, is in the interest of public safety.
- (4) Unless otherwise indicated in a specific Factor, the Recommendation Process and the Guidelines set forth in 803 CMR 1.40 shall apply to all sex offenders (adult, Juvenile, male and female). As used in the factors set forth in M.G.L. c. 6, § 178K(1)(a) through (l), the term "Adult Offender" refers to any sex offender who was 17 years old or older at the time he committed any of his sex offenses while the term "Juvenile Offender" refers to any sex offender who was under the age of 17 at the time he committed all of his sex offenses. The SORB shall consider each offender's criminal convictions, youthful offender adjudications, Juvenile delinquency adjudications and civil commitments.

#### 1.40: Specific Guidelines for Each Factor

Pursuant to its authority to promulgate Guidelines for determining each sex offender's level of risk of reoffense and degree of dangerousness posed to the public (M.G.L. c. 6, § 178K(1)), the Board reviewed the statutory factors enumerated in M.G.L. c. 6, § 178K(1)(a) through (l) as well as the available literature regarding these statutory factors and developed the Guidelines, definitions, explanations, and principles contained in 803 CMR 1.40. The Board shall use the following Factors to develop the policies, procedures, protocols, and objective standards it will apply in its Recommendation Process. Similarly, at a hearing conducted pursuant to 803 CMR 1.07 through 1.26, the definitions, explanations, principles, and authorities contained in these Factors shall guide the Hearing Examiner in reaching a Final Classification decision.

(1) Factor 1: Mental Abnormality [M.G.L. c. 6, § 178K(1)(a)(i)]. This Factor seeks to identify the offender who falls within a range of mental disorders that makes the offender more likely to commit sexual offenses.

The SORB carefully reviewed the available literature (*Quinsey, Harris, Rice & Cormier, 1998; Serin, Malcom, Kahnna & Barbaree, 1994*) and chose to focus on a documented clinical assessment from a licensed mental health professional that indicates a diagnosis of a Mental Abnormality that can be linked to sexual recidivism, such as pedophilia or sexual sadism. This Factor will be applied only to Adult Offenders.

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(2) Factor 2: Repetitive and Compulsive Behavior [M.G.L. c. 6, § 178K(1)(a)(ii)]. This Factor reflects the fact that certain offenders manifest their compulsive behavior by engaging in a continuing course of sexual misconduct involving separate incidents with either the same victim or others. The Board considers these offenders as presenting a greater risk to reoffend and as posing an increased degree of dangerousness (For Adult Offenders: *Hanson & Thornton 1999; Hanson & Bussiere, 1998; Epperson, Kaul & Huot, 1995; McGovern & Peters, 1988*). (For Juvenile Offenders: *Worling & Curwen, 2001*). This Factor shall be applied to both Adult and Juvenile Offenders.

The SORB has decided that, for the purpose of this Factor, an offender exhibits repetitive sexual offending behavior if he has a history of two or more separate incidents of sexual misconduct. Similarly, the SORB has decided that an offender's repetitive sexual misconduct is compulsive if the information regarding his separate incidents of sexual misconduct indicates:

- (a) a repetition of the manner and method of committing the offenses;
- (b) a pattern of ritualistic, bizarre, or distinctive acts;
- (c) that in the interval between acts of sexual misconduct, the offender had sufficient opportunity to reflect on the wrongfulness of his conduct and take remedial measures by avoidance, counseling or otherwise, to stop himself from committing subsequent acts of sexual misconduct;
- (d) adult family members, adult friends, adult co-workers, employers, law enforcement, the court, or social services had sanctioned the offender for sexual misconduct and the offender, nonetheless, committed a subsequent act of sexual misconduct; or
- (e) the offender committed his acts of sexual misconduct as a result of sudden uncontrollable urges or desires to commit the acts.

(3) Factor 3: Adult Offender with Child Victim [M.G.L. c. 6, § 178K(1)(a)(iii)]. M.G.L. c. 6, § 178C expressly defines sex offenses involving a child. This Factor applies to both Adult and Juvenile Offenders, but each in a different manner.

Research indicates that Adult Offenders who target as their victims children who are either extrafamilial or strangers, are more likely to reoffend over time than other sex offenders (*Prentky, Lee, Knight & Cerce, 1997; Abel, Osbourne & Twigg, 1993; Weinrott & Saylor, 1991*). This same research also indicates that Adult Offenders who target male intrafamilial children are also more likely to reoffend over time than other sex offenders. Moreover, such offenders pose a heightened risk to public safety since children normally lack the physical and mental strength to resist an offender. In addition, children can be lured into dangerous situations more easily than most adults.

Relationships between sex offenders and victims can be categorized as intrafamilial, extrafamilial, and stranger. For the purposes of 803 CMR 1.40 these are defined from the perspective of the victim as follows:

- (a) Intrafamilial Victim – includes any persons whose marriage to the offender would be prohibited pursuant to M.G.L., c. 207, §§ 1 through 3. The term shall also include victims who are family or household member substitutes (e.g., adoptive, foster, step-relatives, or any other type of familial household "live-in" relationship) that lived in the same household with the offender for two or more years prior to the offending behavior.
- (b) Extrafamilial Victim – includes any persons with recognizable non-intrafamilial relationship with the offender, such as a friend, co-worker, or acquaintance. In addition, the term shall also include victims who are family or household member substitutes (e.g., adoptive, foster, step-relatives, or any other type of familial household "live-in" relationship) that lived in the same household with the offender for less than two years prior to the offending behavior.
- (c) Stranger Victim – includes any person who has not known the offender for more than 24 hours prior to the offense or who has not established any type of relationship.

Juvenile Offenders are considered to present a higher risk of reoffense if they have ever intentionally sexually assaulted a prepubescent child (*Worling & Curwen, 2001; Ross and Loss, 1991*).

The SORB, recognizing the occurrence of sexual experimentation between similar aged adolescents, shall view the offender who engaged in sexual conduct that, but for the age of the victim, would not have been criminal and the child victim was not less than 13 nor more than 15 years of age and not five or more years younger than the offender at the instant of the offense as possibly presenting a lower degree of dangerousness.

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(4) Factor 4: Offender's Age at First Sex Offense [M.G.L. c. 6, § 178K(1)(a)(iv)]. The age of the offender when he committed his first sex offense is a Factor associated with the risk to reoffend; this includes both Juveniles who commit subsequent sex offenses and adults who start at a young age (*Epperson et al., 1995; Schwartz, 1995; McConaghy, Blaszczyński, Armstrong & Kidson, 1989; Groth & Lorendo, 1987*). However, the Factor shall only apply to those offenders who are 17 years old or older as of the date of classification as Factor 14 better captures the dynamic of this Factor for Juveniles.

A person whose first sex offense was committed while he was under the age of 21 and subsequently committed another sex offense may be viewed as presenting a greater risk to reoffend and as posing an increased degree of dangerousness.

(5) Factor 5: Adjudicated Sexually Dangerous Person or Released from Civil Commitment [M.G.L. c. 6, § 178K(1)(a)(v)]. This Factor requires the SORB to consider a population of offenders who, at some point in their lives, have been found to be sexually dangerous persons. These offenders are those whose personal freedom was revoked for an indeterminate period in order to protect the community. By statute, the SORB is responsible for determining the level of risk to reoffend and the degree of dangerousness posed by each sex offender residing or working within Massachusetts. Because of the legal differences between the criteria and process for civilly committing sexually dangerous persons and registering and classifying convicted or adjudicated sex offenders living in the community, the SORB uses criteria to determine an offender's risk of reoffending and degree of dangerousness that is different from that used by the courts to determine whether an individual is sexually dangerous at the time of the release hearing.

The SORB views any offender who has been adjudicated to be a sexually dangerous person pursuant to M.G.L. c. 123A, whether they have been released or not, as posing a substantial risk to reoffend and as posing an increased degree of dangerousness. This Factor shall apply to both Adult and Juvenile Offenders.

(6) Factor 6: Maximum Term of Incarceration [M.G.L. c. 6, § 178K(1)(a)(vi)]. The SORB considers the offender who declines early release as posing an increased degree of dangerousness due to his unwillingness to accept the constraints of community supervision. This Factor shall apply to Adult Offenders only.

(7) Factor 7: Relationship between Offender and Victim [M.G.L. c. 6, § 178K(1)(b)(i)]. This Factor applies to both Adult and Juvenile Offenders, but in a different manner. Research indicates that the relationship between the Adult Offender and victim is a highly important Factor in determining the risk to reoffend and the degree of dangerousness posed to the community (For Adult Offenders: *Hanson & Bussiere, 1998; Hanson & Bussiere, 1996; Hanson, Steffy & Gauthier, 1993; Barbaree & Marshall, 1989*).

The relationship between the Adult Offender and his victim(s) offers an illustration of the vastness of the offender's pool of potential victims. Research demonstrates a correlation between recidivism rates and offender/victim relationship (*Hanson & Bussiere, 1998*). Adult Offenders who limit their sexual offending behavior to Intrafamilial Victims have, in most cases, the fewest number of potential victims from which to prey upon. The number of available victims potentially increases substantially when offenders choose to sexually offend against Extrafamilial Victims. Finally, there is a dramatic increase in the size of the victim pool when an Adult Offender sexually offends against Stranger Victims.

The potential number of victims, while certainly important, is not the only issue to be considered in understanding the relationship between Adult Offenders and victims. The impact of the offense on the victim, the family, the community, and society in general is extremely useful in determining the dangerousness presented by an Adult Offender. Offenses against Intrafamilial Victims, generally considered to offer a reduced risk of reoffense after legal intervention, have an enormous adverse impact upon the victim and the family unit. Empirically it can be demonstrated that Adult Offenders who have sexually offended against a Stranger Victim have an increased risk of reoffense (*Hanson & Bussiere, 1998*) and certainly present a greater degree of dangerousness to the safety and welfare of the public. Offenses committed against Extrafamilial Victims, especially those perpetrated by an offender who due to his profession, or relationship with the victim, established a position of trust with the victim, and then violated that trust by sexually exploiting the victim, are often devastating to the victim and destructive to the public's sense of trust, safety, and security.

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What is known about Juvenile Offenders is that they primarily target victims who are younger than them and known to them (*Center for Sex Offender Management, 1999*). The SORB shall consider the Juvenile Offender who has sexually offended against a Stranger Victim as presenting a greater degree of dangerousness because they have demonstrated the willingness to extend their offending behavior outside the relationship boundaries usually associated with a Juvenile Offender.

(8) Factor 8: Weapon, Violence or Bodily Injury [M.G.L. c. 6, § 178K(1)(b)(ii)]. The use of weapons, violence, or bodily injury is strongly associated with the degree of dangerousness the offender poses to the community and may be viewed as presenting a greater risk to reoffend. (*Epperson et al., 1998, Boer et al., 1997*). Juveniles who have used excessive violence and/or weapons during the commission of their sexual assault(s) are at a greater risk to reoffend. The use of violence/weapons may be indicative of sexual arousal to violence, may reflect attitudes supportive of sexual violence, or may be related to an antisocial interpersonal orientation (*Worling & Curwen, 2001*).

This Factor shall be applied to both Adult and Juvenile Offenders. Any force or threat of force beyond that necessary for the offender to commit the sexual offense shall constitute violence. Any object used to injure, incapacitate, force, or threaten the victim during the course of the sexual assault shall be considered a weapon. Any injury, requiring medical attention other than for investigative purposes, that is sustained by the victim during a sexual offense shall be deemed bodily injury.

(9) Factor 9: Date(s), Number, and Nature of Prior Offenses [M.G.L. c. 6, § 178K(1)(b)(iii)]. An offender's prior criminal history is significantly related to his likelihood of sexual recidivism and degree of dangerousness, particularly when his past includes violent crimes or sex offenses (*Hanson & Bussiere, 1996; Quinsey, Lalumiere, Rice & Harris, 1995; Romero & Williams, 1985; Longo & Groth, 1983*). The SORB considers "prior" to be prior to the date of the offender's classification by the SORB.

(a) This Factor captures three relevant areas that need to be considered in the determination of risk. First, this Factor relates to the length of time the offender has had access to the community without committing any new offenses. Studies have shown that the likelihood of recidivating decreases for most offenders after the first five to ten years following release from incarceration and becomes substantially lower after ten years in the community (*Epperson et al., 2000; Hanson & Thornton, 2000; Prentky et al., 1997*). For purposes of this Factor, the SORB defines a new offense as a conviction or adjudication for any sex offense, or, a conviction or adjudication for any offense that results in the offender serving a period of confinement that exceeds 60 days. Information in this area only applies to those offenders who are 17 years old or older as of the date of classification.

(b) The second relevant area captured by this Factor addresses the propensity the offender has demonstrated for lawlessness and anti-social behavior (*Bench, Kramer & Erickson, 1997*). The SORB chose to use separate sentencing dates to distinguish between those offenders who commit distinctly separate offenses over a period of time and those whose conviction or adjudication total is based on multiple counts related to a single offending episode. Information in this area only applies to those offenders who are 17 years old or older as of the date of classification.

(c) The third relevant area addressed by this Factor is the nature of the offenses. Much can be learned about an offender by studying the nature of the offenses he has committed, including the level of dangerousness the offender has demonstrated (*Quinsey et al., 1998*). Based on its review of the research, the Board found the presence of deviant sexual interests dramatically increases the risk of reoffending and that the strongest deviant sexual interests have empirically been found to be more prevalent among those offenders who victimize strangers, prepubescent children, non-consenting males, vulnerable persons, and/or use excessive force. The Board otherwise, or unless indicated in this Factor, does not consider sexual gender orientation of either the offender or the victim in determining the risk to reoffend and/or degree of dangerousness posed. Information in this area is applicable to both Adult and Juvenile Offenders except as noted.

Elements related to the nature of the offense are:

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1. The offender committed a sex offense in a public place. The commission of any sex offense in a place where detection is more likely addresses the offender's lack of impulse control and/or the strength of sexual deviance. (*Epperson et al., 2000*). "Public place" is defined as an area maintained for or used by the people or community, or an area that is open to the scrutiny of others.
2. The male offender who commits a sex offense, as defined in M.G.L. c. 6, § 178C, against a male victim. This demonstrates the degree of sexual deviance associated with this offender (*Hanson & Bussiere, 1998; Hanson & Bussiere, 1996; Freund & Watson, 1991*).
3. The offender committed multiple sexual acts on a single victim during a single sexual offending episode. This demonstrates increased deviant arousal demonstrated by the offender and/or increased compulsivity (*Epperson et al., 2000*). Also included in this element is the offender who offends against the same victim more than once over a period of time (*Worling and Curwen, 2001*).
4. The offender committed a sexual offense against an extra-vulnerable victim. For the purposes of 803 CMR 1.40, "extra-vulnerable" means any condition or circumstance, including, but not limited to a physical or mental condition that tends to render a victim more susceptible to sexual assault. An extra-vulnerable victim shall also include a victim under the age of ten and over the age of 60. This demonstrates the deviancy of the offender who chooses victims who cannot adequately defend themselves and/or effectively report the abuse (*McGrath, 1991*). The offender poses a greater risk to public safety since his crimes are difficult to detect and prosecute.
5. The offender committed a sex offense while on community supervision or he was convicted or adjudicated of violating a restraining order subsequent to his first conviction or adjudication for a sex offense. A sex offender who ignores the external controls placed on him by the courts or corrections indicates a stronger drive toward sexual offending (*Epperson et al., 2000*). Lack of impulse control and the ignoring of external controls are key elements in the determining the risk of recidivism and dangerousness (*Epperson et al., 2000*). This element will be applied only to offenders who are 17 years old or older as of the date of classification. Factor 14 will be used to capture this information for Juveniles.
6. The offender has been convicted or adjudicated of any non-sexual violent offenses. This element identifies the violent offender. Research suggests that an offender is more likely to reoffend and present a greater danger if he has previously demonstrated that he can act violently and with no regard to the safety of others (*Quinsey et al., 1998; Bench et al., 1997; McGovern & Peters, 1988*). This element will be applied to Adult Offenders only.
7. The SORB has determined that the level of physical contact between the offender and the victim during the sex offense is another important element to be considered in understanding the nature of the offense and in determining a level of dangerousness.
8. The SORB also considers the length or duration of the sex offending behavior as important and useful information in determining dangerousness, especially when viewed with the other described elements related to the nature of the sexual offense.
9. The number of persons victimized by a sex offender is also useful information in determining the degree of dangerousness presented by an offender. The SORB determined that the offender who has offended against two or more victims should be considered to present a heightened risk of reoffense and a greater degree of dangerousness. (*Worling & Curren, 2001; Hanson and Thornton 1999, Epperson et al, 1998; Quinsey et al, 1998*).
10. Offenders who demonstrate a diverse array of sexual offending behavior are more likely to reoffend than those offenders who do not (*Hanson & Bussiere, 1996; Worling & Curwen, 2001*). The SORB has determined that offenders who have committed a variety of offenses present a significantly greater risk to reoffend and a greater degree of dangerousness.
11. Offenders who have committed sexual offenses against both males and females, and/or both within and outside the family, and/or against known and stranger victims; and/or against victims of a variety of ages are likely at a higher risk to reoffend and present an increased level of dangerousness (*Worling & Curwen, 2001, Hanson & Bussiere, 1998, Boer et al, 1997*).

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12. Pursuant to M.G.L. c. 6, § 178C, the legislature designated certain sex offenses to be sex offenses involving children and/or sexually violent offenses. The SORB has determined that the commission of one or more of these offenses, in and of itself, demonstrates an increased risk to children and other vulnerable persons.

13. Any other information relating to the nature of the sex offenses the SORB may deem useful in determining the risk and dangerousness posed by an offender including, but not limited to, whether, or to what degree, the offender accepts responsibility that he committed his sex offenses and that he did so for his own personal gratification; whether, or to what degree, the offender expresses remorse for his sex offenses and empathy for his victim(s); and whether, or to what degree, the offender's level of violence or deviancy escalated in the commission of his sex offenses.

(10) Factor 10: Currently Supervised by Probation or Parole [M.G.L. c. 6, § 178K(1)(c)]. Strict supervision of sex offenders released into the community is essential to public safety (*English, Pullen, Jones & Krauth, 1995*). Statistics indicate that recidivism rates for all offenders are significantly lower for those individuals being appropriately supervised in the community (*US Department of Justice Crime Statistics Report, 1997*). M.G.L. c. 6, § 178K has identified this Factor as minimizing the offender's risk to reoffend and degree of dangerousness. This Factor shall be applied to both Adult and Juvenile Offenders.

(11) Factor 11: Currently In Sex Offender-Specific Treatment [M.G.L. c. 6, § 178K(1)(c)]. M.G.L. c. 6, § 178K has identified this Factor as minimizing the offender's risk to reoffend and degree of dangerousness. The SORB has determined that currently most professionals in this field consider sex offender-specific treatment utilizing the cognitive-behavioral relapse prevention model to be the most effective treatment modality for Adult Offenders, while both the cognitive-behavioral relapse prevention model and/or multi-systemic therapy is most effective for Juvenile Offenders. (*Center for Sex Offender Management, 1999; Hall, 1995; Pithers & Cumming, 1995; Steel, 1995; Marshall & Barbaree, 1990; Borduin, Henggeler, Blaske & Stein, 1990*). This Factor shall apply only to offenders who are 17 years old or older as of the date of classification. Treatment for Juvenile will be addressed in Factor 14.

Documentation from the treatment provider must be provided to the SORB in order for the Board to consider this Factor. It shall be the responsibility of the offender to provide this documentation to the SORB, either directly or through the treatment provider. This documentation shall, at a minimum, include:

- (a) the name and resume (or "curriculum vitae") of the offender's treatment provider (indicating the treatment provider's practice licenses and numbers);
- (b) the treatment provider's description of the treatment program's milieu, methodology, goals, and objectives;
- (c) a record of the offender's attendance and level of participation at scheduled treatment sessions. Additionally, the SORB encourages offenders and treatment providers to supply the SORB with a report describing in detail the progress, or lack thereof, the offender has made in treatment. Offenders who actively participate in treatment voluntarily (*i.e.*, do so on their own volition and not as condition of supervised release) and those who provide a full written copy of their relapse prevention plan, approved by their treatment provider, may receive additional consideration relative to their level of risk to reoffend and/or the degree of dangerousness they pose to public safety.

(12) Factor 12: Current Home Situation [M.G.L. c. 6, § 178K(1)(c)]. M.G.L. c. 6, § 178K has identified this Factor as minimizing the sex offender's risk to reoffend and degree of dangerousness. This Factor shall be applied to both Adult and Juvenile Offenders. Sex offenders are criminals whose likelihood of reoffending increases when their community environment gives them access to victims or reduces the probability of early detection (For Adult Offenders: *Abel, Mittelman & Becker, 1985*; for Juvenile Offenders: *Worling & Curwen, 2001; Epps, 1997; Ross & Loss, 1991*). The offender who is currently residing in a positive and supportive environment lessens the likelihood of reoffense by reducing the stressors in his life and surrounding himself with family, friends and acquaintances. As a result, parole and probation officers and treatment providers often evaluate the home situation of the offender under supervision or treatment.

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The SORB shall give consideration to the offender whose current living and work situation is stable and considered to be a positive and supportive environment that minimizes the likelihood of reoffense and degree of dangerousness posed by the offender.

(13) Factor 13: Physical Condition [M.G.L. c. 6, § 178K(1)(d)]. M.G.L. c. 6, § 178K specifically identified this Factor as minimizing the risk to reoffend and degree of dangerousness. This Factor seeks to identify those offenders who, due to a debilitating condition, are not likely to be a risk or danger to the community. The SORB shall give consideration to the offender who has an illness or condition that is documented by a licensed, practicing medical doctor who attests that the illness or condition is chronic and substantially minimizes the likelihood of reoffense and degree of dangerousness posed by the offender. This Factor shall be applied to both Adult and Juvenile Offenders.

(14) Factor 14: Sex Offender was a Juvenile when He Committed the Offense. His Response to Treatment and Subsequent Criminal History [M.G.L., c. 6, s 178K(1)(e)]. This Factor shall be applied to all Juvenile Offenders who are under 17 years old as of the date of classification. Research indicates that Juvenile Offenders may be more amenable to treatment because of numerous differences between them and their adult counterparts. Studies illustrate this point by showing that Juvenile Offenders who are responsive in treatment and successfully complete a treatment program are at a lower risk than unresponsive offenders who fail to complete a treatment program (*Hunter & Santos, 1990*).

The SORB has determined that Juvenile Offenders who either fail to successfully complete a sex offender specific treatment program, or are not progressing satisfactorily in such a program, present a significantly higher degree of dangerousness than those Juveniles who respond well or complete treatment. The SORB has further determined that Juvenile Offenders who commit subsequent criminal offenses demonstrate an increased risk to recidivate. Those who commit subsequent sexual criminal offenses during or after completion of a sex offender-specific treatment program present a considerable risk of reoffense and heightened degree of dangerousness. However, as positive as the successful completion or participation in treatment is, the lack of or failure at treatment is equally indicative of a heightened risk of reoffense and increased level of dangerousness (*Worling & Curwen, 2001; Perry and Orchard, 1992*). Furthermore, Juveniles who continue to commit sexual offenses after they have been detected and sanctioned by adult family members, employers, law enforcement, the court, or social services are more likely to continue sexual aggression toward others. These subsequent offenses tend to reveal that the Juvenile sex offender possesses more deviant sexual interests, obsessive sexual interests, or attitudes supportive of sexual offending and may be indicative of a person more resistant to altering deviant sexual interests or attitudes (*Worling & Curwen, 2001*).

The SORB considers the Juvenile Offender who successfully completed sex offender-specific treatment utilizing the cognitive-behavioral relapse prevention model and/or multi-systemic therapy and has not subsequently committed a sex offense as presenting a lowered risk of reoffense. The Juvenile Offender who currently is participating satisfactorily in sex offender treatment, but has yet to complete the program, shall also be considered as presenting a somewhat lowered risk of reoffense, but not to the same degree as an offender who has completed a treatment program. Documentation from the treatment provider must be provided to the SORB in order for the Board to consider this Factor. It shall be the responsibility of the Juvenile Offender to provide this documentation to the SORB, either directly or through the treatment provider. This documentation shall, at a minimum, include:

- (a) the name and resume (or "curriculum vitae") of the offender's treatment provider (indicating the treatment provider's practice licenses and numbers);
- (b) the treatment provider's description of the treatment program's milieu, methodology, goals, and objectives;
- (c) a record of the offender's attendance and level of participation at scheduled treatment sessions. Additionally, the SORB encourages offenders and treatment providers to supply the SORB with a report describing in detail the progress, or lack thereof, the offender has made in treatment. Offenders who actively participate in treatment voluntarily (*i.e.*, do so on their own volition and not as condition of supervised release) and those who provide a full written copy of their relapse prevention plan, approved by their treatment provider, may receive additional consideration relative to their level of risk to reoffend and/or the degree of dangerousness they pose to public safety.

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The SORB shall consider the Juvenile Offender who has failed to complete, is participating unsatisfactorily, or has not attended a sex offender-specific treatment program as presenting a higher risk of reoffense and increased level of dangerousness. Additionally, any Juvenile Offender who commits a subsequent sexual offense after detection and intervention by family, employer, law enforcement, the court, or social services shall be considered as presenting a greater risk to reoffend and higher level of dangerousness.

(15) Factor 15: Psychological or Psychiatric Profiles Indicating Risk to Reoffend [M.G.L. c. 6, § 178K(1)(f)]. This Factor considers whether documentation has been obtained from a licensed mental health professional that specifically indicates that a particular sex offender posed or poses a risk to reoffend. This Factor shall be applied to both Adult and Juvenile Offenders. The SORB shall give consideration to the offender whose file contains documentation from a licensed mental health professional specifically indicating that he posed or poses no risk to reoffend. The SORB shall also give consideration to the offender whose file contains documentation from a licensed mental health professional specifically indicating that he posed or poses a risk to reoffend. If introduced into evidence at a hearing conducted pursuant to 803 CMR 1.07 through 1.26, the Hearing Examiner may give the contents of this documentation its appropriate evidentiary weight except that the Hearing Examiner shall exclude from evidence so much of the documentation that expresses any opinion as to the offender's risk to reoffend unless the Party offering the documentation into evidence has complied with the provisions of 803 CMR 1.18(5) through (6).

(16) Factor 16: Substance and/or Alcohol Abuse [M.G.L. c. 6, § 178K(1)(g)]. The abuse of substances and/or alcohol by sex offenders is highly linked to sex offending (*Lightfoot & Barbaree, 1993; Langevin & Lang, 1990; Crowe & George, 1989*). Research demonstrates that the use of substances and/or alcohol does not cause deviant behavior; rather, it acts as a disinhibitor and can be a precursor to sex offending (*Green, 1995*). Consequently, the SORB has concluded that the offender who has a history of substance or alcohol abuse or a conviction or adjudication for a substance or alcohol-related incident subsequent to the sex offense(s) may be at a higher risk to reoffend. This Factor shall be applied to both Adult and Juvenile Offenders.

(17) Factor 17: Sex Offender Treatment while Incarcerated [M.G.L. c. 6, § 178K(1)(h)]. This Factor examines whether an offender participated in and was responsive to sex offender treatment while incarcerated and is applied only to offenders who are 17 years old or older as of the date of classification as Factor 14 better captures the dynamic of this Factor for Juveniles. Findings from outcome studies on offenders show higher sexual recidivism rates for individuals who fail to successfully complete treatment programs (*Marques, Day, Nelson & West, 1994*). The SORB recognizes that sex offender treatment has not always been available to incarcerated individuals. The SORB shall give consideration to the offender who, during his most recent opportunity to participate in treatment while incarcerated, refused to participate in a sex offender treatment program or dropped out or was terminated prior to the program's completion.

(18) Factor 18: Sex Offender Treatment while on Probation/Parole [M.G.L. c. 6, § 178K(1)(h)]. This Factor examines whether an offender participated in and was responsive to sex offender treatment while on community supervision and is applied only to offenders who are 17 years old or older as of the date of classification as Factor 14 better captures the dynamic of this Factor for Juveniles. As previously discussed, findings from outcome studies on offenders show higher sexual recidivism rates for individuals who fail to successfully complete treatment programs (*Marques et al., 1994*). The SORB recognizes that not all offenders are required to attend sex offender treatment as a condition of parole or probation. The SORB shall give consideration to an offender who, during his most recent supervision requiring participation in treatment, refused to participate in a sex offender treatment program or dropped out or was terminated prior to the program's completion.

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(19) Factor 19: Recent Behavior while Incarcerated [M.G.L. c. 6, § 178K(1)(i)]. The Act specifically mandates the SORB to examine each offender's recent behavior, including behavior while incarcerated. An offender who unsatisfactorily adjusts to the rigors of confinement by violating rules in a highly structured environment presents an increased level of dangerousness (*Epperson et al., 2000*). Unsatisfactory adjustment is evidenced by violations of the disciplinary rules. In determining the potential dangerousness, the Board may consider such elements as:

- (a) the number of disciplinary reports the offender received during his incarceration;
- (b) the seriousness of the violation reported in the disciplinary report; and/or
- (c) the length of time that has elapsed since the offender's last disciplinary report and his release from incarceration. This Factor shall be applied to both Adult and Juvenile Offenders.

(20) Factor 20: Recent Behavior while on Probation/Parole [M.G.L. c. 6, § 178K(1)(i)]. The Act specifically mandates the SORB to examine each offender's recent behavior, including behavior while being supervised in the community on conditional release. An offender who unsatisfactorily adjusts to the external controls inherent to community supervision poses a significant risk when those controls are removed (*Scott, 1994*). Unsatisfactory adjustment is evidenced by violations of the rules of the supervising agency or the conditions of release. In determining the potential dangerousness this Factor may represent the Board may consider such elements as:

- (a) the number of violations the offender received during his period of supervision;
- (b) the seriousness of the violation reported in the violation notice or report; and/or
- (c) the length of time that has elapsed since the offender's last violation notice or report and his release from supervision. This Factor shall be applied to both Adult and Juvenile Offenders as well as Juveniles who were subject to any other forms of conditional release other than probation or parole.

(21) Factor 21: Recent Threats [M.G.L. c. 6, § 178K(1)(j)]. This Factor considers whether the offender has made recent threats against persons or expressed intent to commit additional offenses. This demonstrates poor impulse control and poor cognitive-problem solving skills, both of which are indicators of self-management difficulty and thus, an increase in dangerousness (*Hanson & Harris, 2000*). The SORB considers the offender who threatens another person and/or expressly demonstrates that he has a plan, desire or intent to commit additional offenses within the last 24 months prior to the date of classification. This Factor shall be applied to both Adult and Juvenile Offenders.

(22) Factor 22: Materials Submitted by the Sex Offender; Recent Behavior [M.G.L. c. 6, § 178K(1)(i)]. This Factor is applicable to all Adult and Juvenile Offenders. The SORB will provide the offender with the opportunity to present Documentary Evidence and input in consideration of his recommended classification. In addition to the information the SORB will specifically request in relation to Factors 11, 14, and/or 24, the offender will be invited to submit Documentary Evidence regarding any other information the offender wishes to highlight for the SORB. To consider recent behavior, the SORB will ask the offender to provide an overview of his behavior and lifestyle within the 24 months preceding the date of the notification. In addition, the SORB will consider information received from other reliable sources regarding the offender's recent behavior. Of particular interest to the SORB is the offender's home situation, education/employment stability, type of employment, and non-work related activities. The SORB will consider all evidence submitted by the offender pertaining to this Factor.

(23) Factor 23: Victim Impact Statement [M.G.L. c. 6, § 178K(1)(k)]. This Factor is applicable to all Adult and Juvenile Offenders. The SORB will consider a written statement submitted by the victim of a sex offense, the parent/guardian of a child victim or the guardian of an adult victim of a sex offense that resulted in a conviction or adjudication. The SORB recognizes the substantial impact sex offenses have on victims. The SORB will routinely review and consider written statements submitted by the victim(s).



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(24) Factor 24: Sex Offender-specific Treatment: Progressing Less Than Satisfactorily or Successfully Completed. This Factor is applicable only to offenders who are 17 years old or older as of the date of classification as Factor 14 better captures the dynamic of this Factor for Juveniles. The SORB shall consider a written report or statement from the offender's current treatment provider that indicates he is progressing less than satisfactorily. Less than satisfactorily includes, but is not limited to, failure to attend treatment sessions, failure to participate in group treatment sessions, failure to express empathy for his victim(s), failure to accept responsibility for his sex offense(s), or as otherwise stated by the treatment provider.

In addition, the SORB shall consider documentation that the Adult Offender has successfully completed a sex offender-specific treatment program utilizing the cognitive-behavioral relapse prevention model, and/or, in the case of the Juvenile Offender, multi-systemic therapy. Because successful completion of treatment is a significant Factor in reducing a sex offender's level of dangerousness, the SORB will request that an offender specifically address whether he has completed a sex offender-specific treatment program using the cognitive-behavioral relapse prevention model, and/or, in the case of the Juvenile Offender, multi-systemic therapy.

1.41: Severability

If any regulation or section, sub-section, sentence, phrase or portion thereof is found to be invalid by a court of competent jurisdiction for any reason, said portion shall be deemed a separate, distinct, and independent provision, and the validity of the other regulations shall not be affected.

REGULATORY AUTHORITY

803 CMR 1:00 M.G.L. c. 6, §§ 178C through 178P.

NON-TEXT PAGE